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CURRENT EVENTS.

LEGAL JOURNALS—LEADING ARTICLES.—In many of the American legal journals, but we believe only one or two of the English, appear habitually what are usually called "leading articles," the value of which to the profession, and especially to the active practitioner, is very generally recognized. These articles are, in effect, miniature treatises or text-books upon some narrow but important subject, and when prepared as they should be are well arranged and exhaustive. The authors are described by Judge Elliott, in his recently published volume on "The Work of the Advocate," as specialists. He says: "Writers of leading articles in the law periodicals are, for the time at least, and in a limited sense, specialists discussing particular subjects with a well-defined object in view. If they do their duty well, as in general they do, they will discuss the particular topic better than an author of even more ability writing upon a general subject. Their mental power is concentrated, and they see more clearly the lights and shades, the agreements and the differences, than one who takes a broad view of even one branch of jurisprudence. For this reason a greater benefit from the study of these articles may be derived than can usually be gained from the study of the text-books. To be sure, these articles can neither be well understood nor properly used without a knowledge of the elementary principles; but when these principles are mastered, the articles of which we are speaking light up many dark places, and reveal the true road. * * * We are not now, it may not be amiss to remark, referring to the mere reading of the magazines as they come from the press, for that, we suppose, will be done for the purpose of keeping in line with the current legal literature and decisions, but we are speaking of occasions when the advocate, with his mind aroused to actual work, is searching for the law of his case. More lawyers than one, veterans in experience and masters in rank, have received valuable assistance from the law journals."

We concur with Judge Elliott in the foregoing, and in addition we would remark that legal journals are not what is usually denominated "light reading," designed, like many secular magazines, for the mere delectation and entertainment of the reader; on the contrary, they should be heavy in the sense of imparting solid and valuable information. A legal journal properly conducted should, in every department, seek to *instruct* (if we may be permitted to say so), and with this view the editor should strive to enlist, as far as possible, all the ability and learning of the very best contributors. The purpose of a good leading article should be to furnish the reader, in a compact and condensed form, with *all* the fruits of the labor of the writer. To this end it must be exhaustive, every phase of the subject must be treated, and every authority favorable to the views of the author or adverse to them should be cited. A leading article should, therefore, be complete within itself, *totus teres atque rotundus*, without addendum, appendix, supplement, or "to be continued."

The subject of a leading article must be narrow, a segment of one of the great topics of the law. One cannot, for example, write an exhaustive article on the subject of "Fraud." The style of a leading article should be as concise as possible, consistently with clearness. As the subject must be important as well as narrow, and as the space which legal journals can usually allot to such articles is necessarily limited, it is manifest that special care should be taken to prevent an essay on an important subject, however narrow, from overflowing all reasonable limits. Of course "padding," the sin which doth so easily beset many legal authors, is utterly out of the question; quotations should be very sparingly indulged in, and long extracts from the opinions of courts should be religiously excluded. Some people suppose that a peculiar sanctity attaches to every *dictum* of a court; of course, whatever the court says in deciding a case is law, but it also says many other things *arguendo* and *obiter* which are not law.

Some judges seem to think that they have all futurity in which to write their opinions, and can, and do, indulge in a diffuseness of

style that would be utterly unsuitable to a writer who is limited to a few thousand words.

The publication of selected cases in full with notes particularly prepared upon each case is less common, but hardly less useful than the publication of leading articles. The case, if properly and judiciously selected, furnishes the latest judicial exposition of the law on the subject, and the note appended to it should, and usually does, state with sufficient clearness and precision all the latest decisions on all cognate and collateral questions. The importance of case law and precedent in the present condition of the science of the law, and the present methods of practice is too obvious to require comment, and we hazard nothing in saying that legal journals with good leading articles and well selected cases, thoroughly annotated, furnish the profession in compact and condensed form with more useful and available information for practical purposes on current living legal questions than can be derived from any other source whatever.

The immensity of the case law of the United States will be appreciated when we state that the annual digest of cases decided within a year by the federal courts and the State courts of the last resort contains over 11,000 adjudged cases, all of them law somewhere, and most of them available as authority everywhere. We think a legal journal does much to keep its readers fully abreast with the profession and thoroughly informed on the subject of current law, which furnishes its readers with concrete abstracts of these "modern instances," the latest authentic expositions of the law. As we always strive to practice what we preach, we may here state that, within twelve months preceding November 1, 1888, we have printed in our Weekly Digest of Recent Cases in this JOURNAL 11,587 short and concise abstracts of cases decided by federal courts and by State courts of the last resort, in every instance stating succinctly the principal point decided, and referring to the volume and page of the "reporter" in which the full case may be found. Finally, we would repeat that the object of a legal journal should not be to minister to the entertainment of the reader, nor yet to assume the port and dignity of a politico-philosopical authority, devoting itself exclusively or chiefly to the discussion of politico-juridical questions. To attain the *maximum* of usefulness it should, without neglecting such matters "of great pith and moment," as address themselves to the consideration of the profession, be chiefly devoted to the actual business of the practitioner to enable him the better to discharge his duties in the affairs of this work-a-day world.

NOTES OF RECENT DECISIONS.

NEGOTIABLE PAPER—INDORSEMENT—THIRD PERSON—GUARANTY.—The Supreme Court of Illinois has recently decided a case[1] defining the liability of a third person who writes his name across the back of a negotiable note. The facts were that the defendant so indorsed the note, and the question was whether he thereby assumed the liability of a guarantor or that of an indorser entitled to notice of the demand and dishonor of the paper. The court held that he was responsible only as indorser, and as he had not received notice of the dishonor of the paper, judgment in his favor was rendered in the court below. This judgment was affirmed upon appeal, the court saying:

"The sole question on the trial in the circuit court was whether the defendants assumed the liability of indorsers or that of guarantors, when they wrote their names across the back of the note in suit. The jury found that they assumed the liability of indorsers, and not that of guarantors; and the court gave judgment upon that finding in favor of the defendants. This judgment was affirmed on appeal by the appellate court of the third district. The question in the circuit and in the appellate courts seems to have been purely one of fact. We have looked in vain through this record to find a ruling upon a question of law raised in the trial court, and considered in the appellate court, which can now be urged as ground for reversal. No objection was urged on the trial to the defense interposed because of the condition of the pleadings, or, so far as we have been able to discover, for any other cause, and, in instructions asked in behalf of appellant, it was assumed and stated that the placing of the name of a third party

[1] De Witt County Nat. Bank v. Nixon (S. C. Ill., Sept. 27, 1888), 18 N. E. Rep. 203.

on the back of a note is *prima facie* evidence only that the liability intended to be assumed is that of guarantors. But that this is *prima facie* evidence only that such liability is intended to be assumed, and that it may be shown that the real contract is that the liability intended to be assumed is that of indorser, is established by many adjudged cases.[2] We find no error of law justifying a reversal of the judgment of the appellate court."

[2] Carroll v. Weld, 13 Ill. 682; Webster v. Cobb, 17 Ill. 459; White v. Weaver, 41 Ill. 409; Parkhurst v. Vail, 73 Ill. 343; Boynton v. Pierce, 79 Ill. 145; Stowell v. Raymond, 83 Ill. 120; Eberhart v. Page, 89 Ill. 550.

EVIDENCE — PAROL EVIDENCE — SALE — WRITTEN CONTRACT.—The New York Court of Appeals has recently decided a case[1] defining one of the conditions upon which parol evidence is admissible to vary and supplement the terms of a written contract of sale. The defendant had sold to the plaintiff a lot of lumber, and the terms, price, etc., of the sale were expressed in a written contract, which had been duly delivered, and which apparently fully stated the whole contract. The defendant, however, refused to deliver the lumber in accordance with his engagement, because he had not been satisfied as to the financial responsibility of the plaintiff. There was no stipulation in the written contract that he should be so satisfied, but the defendant alleged and proved that there was a parol agreement between him and the plaintiff; that the report of the commercial agency on the solvency of the latter should be favorable, and that such report was not favorable, thereupon the plaintiff brought this suit which was decided in his favor by the trial court, and the defendant appealed. The decision of the court below was reversed upon appeal, the court saying: "In effect that the evidence brings the case within the rule now quite well established, that parol evidence is admissible to show that a written paper which in form is a complete contract, of which there has been a manual tradition, was, nevertheless, not to become a binding contract until the performance of some condition precedent resting in parol.[2] Upon this ground we think the evidence of the parol understanding, and also that the reports of the agencies were unsatisfactory, was properly admitted by the referee, and sustained his report, and that the general term erred in reversing his judgment. It is, perhaps, needless to say that such a defense is subject to suspicion, and that the rule stated should be cautiously applied to avoid mistake or imposition, and confined strictly to cases clearly within its reason."

[1] Reynolds v. Robinson (N. Y. Ct. App., Oct. 2, 1888), 18 N. E. Rep. 127.

[2] Pym v. Campbell, 6 El. & Bl. 370; Wallis v. Littell, 11 C. B. (N. S.) 369; Wilson v. Powers, 131 Mass. 539; Seymour v. Cowing, 4 Abb. Dec. 200; Benton v. Martin, 52 N. Y. 570; Juilliard v. Chaffee, 92 N. Y. 535, and cases cited; 2 Tayl. Ev. § 1038; Steph. Dig. Ev. § 927.

THE SCOPE OF THE INTENT IN ACTIONS FOR FALSE REPRESENTATIONS.

We propose to offer a few observations on the subject of the intent in actions or defenses based upon false representations. Firstly. Does the intent form an integral factor in all that variety of actions which fall under the title of deceit? Secondly. When necessary to be shown what is its character? We will first attempt a general classification for actionable false representations. They may be conveniently divided into three general heads: 1. Those made with reference to the subject of the suit.[1] 2. Those made touching some fact not the subject of contract between the party making the representation and him to whom it is made, but asked for by the latter as a guide to his conduct with a third party.[2] 3. Those representations made under such circumstances as to cause unknown persons to act on them.[3]

It is laid down in several respectable treatises that, *inter alia*, in all such actions it must be shown that the false representation was made with intent to deceive, or with the intent that it should be acted on. Does this statement embody sound law as applicable to *all* three of the classes above named? We submit that it does not. Before proceeding to discuss the point it seems pertinent to ob-

[1] Chandelor v. Lopus, 1 Smith, L. C. 77.

[2] Pasley v. Freeman, 2 Smith, L. C. 55: s. c., Big., L. C. Torts, 1; Ross Com. Law, pt. I, 387; Shirl., L. C. (2d ed.) 293; Law, L. C. (Com. Law), 245.

[3] Langridge v. Levy, 2 M. & W. 519; s. c., Ross Com. Law, pt. I, 403; Shirl., L. C. 315; Law, L. C. (Com. Law), 248; on error, 4 M. & W. 331.

serve that if such intent forms a part of the plaintiff's case it must be proved, if necessary to be proved it must be alleged, and if it does form part of the case, but alleged unnecessarily, it might necessitate proof,[4] though, perhaps, innocuous as a matter of pleading under the code system. This risk ought not to be needlessly incurred, as, if the intent be required on principle or called for by faulty pleading, it imposes upon the plaintiff its proof. If it be replied that it may be treated as a matter of inference from the allegation made in all well-drawn complaints that the plaintiff was "thereby" induced to do or refrain from doing something to his proximate damage, it may then be well rejoined, *cui bono* allege that which you are not required to do, and the expression whereof may enforce an intensification of the proof. Let us, then, see if this statement of the text-writers will bear the scrutiny of a cross-examination. The law speaks in good pleading. This is a maxim, of origin coeval with the common law, thoroughly embedded in our jurisprudence. We say, then, that if an allegation embodying the statement of the text-books under discussion cannot be found in any of the works on pleading of acknowledged authority, that circumstance affords, of itself, a strong argument against the existence of the principle. No such allegation is to be found in Wentworth, Chitty, or any of the works on pleading of established repute. Abbott follows in the rut of Chitty, Estee, also, except his form of complaint against the directors of a corporation. In that the author substantially incorporates the principle.[5] The writer has been unable to find, in any respectable treatise on code pleading, any precedent containing an allegation of such intent except as above stated. Chitty does not contain a form based upon the issue of a fraudulent circular, but, in the declaration given in Gerhard v. Bates,[6] based upon such representation, no allegation of the intent under discussion therein appears, the language being evidently adopted from Chitty. Judge Estee cites no authority on established precedents for his interpolation, and fails to give any reason therefor. So much for the argument as based on time-honored precedents. Let us then examine the point on principle. The view under discussion cannot, with any appropriateness, be applied to our first class of cases, for, when one makes false representations, certainly if false within his knowledge, affecting some matter or thing which afterwards becomes the subject of litigation between him and the party to whom the representation was addressed, it must follow, as a legal proposition, *ex vi termini*, that the party so representing intended that his representation should be acted on by the other party. Now, as the law requires nothing insensible, *cui bono*, should the party deceived be required to prove, as an independent fact, an intent which, when acted on, must be irrisistibly presumed from evidence of a representation known to be false? The law does not require the refinement of pure gold. So, with reference to our third class, if the party, so representing, knew that third persons had the right to act upon the representation, and they did so to their injury, why should not the party so representing be deemed, by like presumption, to intend the probable consequences of his own act? But, with reference to our second class, other considerations must control. The instances falling within it are of a more flexible character. *Ex gr.*, suppose one to publish in a newspaper a card stating that A. B. was insolvent, knowing it to be false, with what propriety can it be argued that the utterer of the falsehood is to be presumed to intend that some, to him unknown, reader will act on the publication? Indeed, it often happens in such instances that the statement is so garnished by expressions of personal malevolence as to reasonably produce quite the opposite effect. Again, it may have only amounted to a rambling remark made in casual conversation. How would any presumption be drawn in that case? Whether calculated to induce any of the listeners to act upon it would depend upon various considerations of human nature, as, whether any one of those addressed was more or less credulous, or whether it was treated as said idly, or in jest, or seriously, the occasion that led up to the observation, the personal relations of the declarant and the object of his discourse, the opinion entertained by the listener concerning either the character or reputation of th

[4] Stephen on Pl., 160.

[5] 2 Est. Pldgs., § 2783, Sec. VII.

[6] 2 El. & B. 475; s. c., 20 E. L. & Eq. Rep. 129; Thomp. Liab. Off., 158.

utterer for veracity or credibility, the private estimate entertained by the hearer of the declarant's means of information, and whether the former was cautious and likely to make further inquiry or impetuous, and apt to act on sudden impulse. The law never bases a presumption on equivocal facts: it is the result of that most logical of all human deductions, namely, the ultimate *aggregatio mentium*, or, at least, founded upon the usual corrolation of facts, or, in a few instances (which do not concern us), upon considerations of public policy *ex gr.*, *pater est quem nuptiæ demonstrant*, a presumption formulated in a maxim of universal application, though in one sense made *pro re rata*. As, therefore, it cannot be said in such case that the knowingly-made false statement had the necessary, or even usual effect of causing it to be acted on, and that circumstance is a necessary ingredient of the plaintiff's action, the burden of proof rests with him to show, as an independent fact, that such representation was made with such intent; not merely to show that it was in fact acted on, but, by such proof as may be produced, that such was the defendant's intention. As to the third class, it would be manifestly absurd to hold that one, by stating some fact, intentionally restricted to a single person, or select few, with a view to its being acted on by him or them, should be presumed to intend such utterance to affect the conduct of others to whom it might be improperly or accidentally communicated. The only exception to this proposition is, when the declarant has reason to believe that his false statement may properly be communicated to some third person.[7] This view is illustrated by the cases of Langridge v. Levy, *supra*, Swift v. Jewsbury,[8] and Swift v. Winterbotham.[9] In the first, the defendant warranted a gun to the father of the plaintiff as made by Nock, and as a good, safe and secure gun, He was informed, at the time, by the plaintiff's father that he wanted the gun for the use of himself and his sons. The purchase was made and afterwards the gun exploded in the plaiutiff's hand and injured him. The plaintiff was held entitled to recover in case for the tort. The learned judge did not instruct the jury that it was necessary to be shown that the defendant made the representation embodied in the warranty with the intent that it should be acted upon. The declaration failed to aver it, but Baron Parke, in delivering the opinion, says: "If it be a falsehood told with the intention that it should be acted upon by the party injured," the plaintiff could recover. In other words, he puts it substantially as if the false representation had been made to be communicated to the plaintiff, and the gun had been placed in the hands of a third person to be delivered to plaintiff to be used by him; that the plaintiff had acted on the representation to his proximate injury, and that in this respect the defendant would be liable. The verdict for the plaintiff on the declaration and facts as above stated was undisturbed. So this case can hardly be treated as authority for the position under discussion to its full extent, but only as deciding that under the facts in evidence, the defendant was presumed to have intended his representation to be acted on, or that it *might be* acted on by the plaintiff.

In Blackmore v. Ry. Co.,[10] the court say: "It has always been considered that Langridge v. Levy was a case not to be extended in its application." Swift v. Winterbotham and Swift v. Jewsbury,[11] follow in the wake of Langridge v. Levy. Each of those cases was based upon a false representation made to a bank, of which the plaintiff was a customer, as to the credit of a third person. The action was held maintainable. It was, in evidence, that it was the usage amongst bankers to make inquiries of this kind on behalf of their customers, and the court lay stress upon that circumstance, and held that the defendant "must necessarily be considered to have known and contemplated that it (the representation) would or might be communicated to the customer of the bank, if any, on whose behalf the information was sought." It is noticeable that the court take

[7] On the trial, Nock was examined as a witness and proved that the gun was not of his manufacture, but was asked nothing as to the quality of the gun *per se*, nor was there any evidence of its defectiveness except such as was inferrible from the accident which gave rise to the suit. The remoteness of the damage was not pressed, and, indeed, the case seems to have been poorly defended throughout.

[8] L. R., 9 Q. B. 301; s. c., 8 Eng. Rep. (Moak) 354.

[9] L. R., 8 Q. B. 244; s. c., 5 Eng. Rep. (Moak) 202.

[10] 8 E. & B. 1035, 1053.

[11] *Supra*.

care to expressly state that the decision is confined to the plaintiff who procured the bank to make the inquiry, and that the decision was not intended to apply to any other customer to whom the bank might have subsequently communicated such representation. The cases of Barry v. Croskey[12] and Peck v. Gurney,[13] follow in the same groove. In the former the Vice-Chancellor takes the distinction herein contended for. First, "every man must be held responsible for the consequences of a false representation made by him to another, upon which that other acts, and, so acting, is injured or damaged; secondly, every man must be held responsible for the consequences of a false representation made by him to another upon which a third person acts, and, so acting, is injured or damaged, provided it appears that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss." But, in none of these cases was it alleged in the declaration or bill that the representation was made with intent that it should be acted on. In the leading case of Pasley v. Freeman, the allegation of such intent does not occur in the declaration, nor is it held to be an ingredient of the plaintiff's case.

We have thus seen that the English judges have stated that the intent under consideration is to be proved; but when we consider that general expressions were made in cases in which no such intent was charged in the *narr* or proved as a fact, they must be understood as meaning simply to say that such intent, if the proof shows that a knowingly false representation was made directly or indirectly to one, who, in acting upon it, suffered proximate injury, is inferrible therefrom, or, at utmost, that treated as a matter of ordinary proof, it is necessary and only required in that class of instances falling under the doctrines enunciated in Pasley v. Freeman and Langridge v. Levy.

Let us now view the question by the light of authority. There is not to be found a single English case which holds that it is necessary to prove such intent as a fact in all the instances falling under our first class. The initial English case is Chandelor v. Lopus.

[12] 2 John. & H. 117.

[13] L. R., 6 H. of L. 377; s. c., 8 Eng Rep. (Moak) 1.

That case established the doctrine that in actions of deceit the *scienter* must be shown. At one time it was held by the court of Queen's bench that falsity, without fraud, in false representation was sufficient,[14] but those cases were reversed in the exchequer chamber, and ever since it has been the settled doctrine that the burden of proof requires evidence of the *scienter*. It has likewise been held, in all cases falling under our first class, that from proof of the false statement, the *scienter* and the resultant damages the intent to deceive, which, in such cases, involves *in se* the intent that the representation should be acted upon, is inferred. The expression to be found in the text-books to the effect that it is necessary to prove an intent that the representation should be acted upon, will be found, upon an examination of the cases cited in its support, not to be of universal, or, indeed, of general application, and, at least, does not affect cases falling under our first class. We will proceed now to give a short review of the purport of the cases cited by the text-books referred to.

Tapp v. Lee,[15] was a misrepresentation of the credit of a third person.

Thom v. Bigland,[16] only decided that in an action for deceit fraud must be shown.

Polhill v. Walter,[17] was where the defendant had been induced to accept a bill *per proc* by one not a party thereto, in consequence of the latter's representations that the bill was regular. The defendant accepted in the name of the drawee as *by his procuration*. The bill was negotiated in the market and an indorsee sued the drawee, and, failing to recover, brought an action against Walter for false representation *in so* accepting. This aligns the case under our third class, had there been fraud as well as false representation shown.

In Watson v. Poulson,[18] it was contended that the giving of a post-dated check by defendant to one Sartain, who transferred it to plaintiff, and the subsequent stopping payment thereof by the defendant, constituted a good cause of action and fell under Polhill v.

[14] Fuller v. Wilson, 3 A. & E. (N. S.) 58; Evans v. Collins, 5 *Ib.* 805.

[15] 3 B. & P. 367.

[16] 8 Exch. 725; s. c., 20 E. L. & Eq. Rep. 467.

[17] 3 B. &. A. 122.

[18] 15 Jur. 111; reported 7 Eng. L. & Eq. Rep. 535

Walter; but it was held that no fraud was established.

Pasley v. Freeman, was an action for falsely representing the credit of a third party.

Foster v. Charles,[19] was an action against the defendant for falsely representing to the plaintiff the competency of a third party as a servant.

Childers v. Wooler,[20] was where a judgment had been obtained by P against W F. On a *fi. fa.* issued thereon the attorney for P indorsed it as follows: "The defendant is a ————, and resides at Redcar, in your bailiwick." It turned out that he did not reside there, but the sheriff, acting on the direction, executed his writ accordingly, and in consequence was sued, etc., and brought his action against the attorney for a false representation.

Gerhard v. Bates,[21] was an action based on a false prospectus, issued by the defendant as a director of a company, touching the shares of said company not addressed to the plaintiff but to the public at large.

Taylor v. Ashton,[22] was to the same effect.

It is true that Ormond v. Huth,[23] was a sale, but the declaration followed Chitty and it was not held by the court that an intention to deceive or that the buyer should act upon the representations must be proved as an independent fact.

Haycroft v. Creasy,[24] was a representation as to the credit of a third party.

Evans v. Bicknell, was a bill in chancery to charge a trustee for having, by delivering the title deeds to the tenant for life, enabled him to effect a mortgage as tenant of the fee. Lord Eldon does not lay down the proposition under discussion.

Edwards v. McCleay,[25] was a bill for specific performance, and was decided with reference to a *suppressio veri.*

Adamson v. Evitt,[26] was a bill to cancel the sale of an annuity. The doctrine of intent under consideration was not promulgated.

[19] 6 Bing. 396; s. c., 7 Bing. 104.
[20] 2 El. & El. 287.
[21] 2 El. & Bl. 476; s. c., 20 E. L. & Eq. Rep. 129; Thomp. Liab. Off., 158.
[22] 11 M. & W. 401.
[23] 14 M. & W. 651.
[24] 2 East, 92.
[25] 2 Swanst. 287.
[26] 2 Rus. & My. 66.

Attwood v. Small,[27] was a bill filed to rescind a sale. None of the lords delivering opinions in defining false representation put such intent as an ingredient.

Jennings v. Broughton,[28] was altogether similar to, and the point treated as in Gerhard v. Bates, *supra*, and Taylor v. Ashton, *supra.*

Rawlins v. Wickham,[29] was a bill to rescind a contract, and the intent we are discussing was not assumed as forming part of the definition of such fraud.

Slim v. Croucher,[30] was, in its circumstances, almost *sui generis.*

The defendant H, already having a lease from the defendant C, concealing the fact, applied to the solicitors of the plaintiff for a loan upon the property embraced by it, stating that the defendant C had agreed to grant him a lease of the property, which was identical with that embraced by the concealed lease. The solicitors applied to the defendant C for his ratification, which he gave and signed, and delivered a paper-writing in the form of a lease of the premises to H, and thereupon H mortgaged the same to the plaintiff. The first lease being discovered the bill was filed, praying that the defendant C might be ordered to pay the amount lent, etc. The Lord Chancellor, speaking to the point that the facts were exclusively cognizable at law, declared "here was a misrepresentation, made by the defendant, of a fact which ought to have been within his knowledge; *it was made with intention of being acted on;* it was acted on, and thereby a loss accrued to the plaintiff." Now, it cannot be contended with any propriety that C was a party to the agreement resulting in the mortgage, but was merely the accidental cause of it. The case, therefore, falls within the principle of Langrdige v. Levy and Swift v. Winterbotham, *supra.*

Murray v. Mann[31], was an action for the keep of a horse. The point as to intention did not properly arise in the case. It is not noticed by Pollock, C. B., and Platt, B., and the remarks of Parke, B., are purely *obiter dicta.* All he does say is with reference to a

[27] 6 Cl. & Fin. 232.
[28] 5 DeG. M. & G. 127; s. c., 17 Jur. 905; 22 L. J. (N. S.) Ch. 585; 17 Beav. 234; s. c., 19 E. L. & Eq. Rep. 420.
[29] 3 DeG. & J. 304.
[30] 1 DeG. F. & J. 518.
[31] 2 Exch. 538.

collateral matter, "for it was an untruth told to another with a view to induce him to alter his condition, etc."

Wilde v. Gibson,[32] was a bill to rescind a purchase and conveyance of an estate. The point under discussion is not touched upon in any of the opinions delivered.

Arkwright v. Newbold,[33] and Smith v. Chadwick,[34] in their features were altogether similar to Gerhard v. Bates, *supra*.

The following American cases, either expressly or impliedly, sanction the view that, even in instances falling under our first head, it is necessary to prove an intent to deceive or that the representation should be acted on.[35]

As a matter of proof, then, from the reason of the thing as well as by the weight of authority, it appears that the proposition under discussion has been allowed too wide a scope in many of the text-books, and, it may be asserted that no such proof is required in cases falling under our first class, but, is generally required in other kinds of actions. It will be observed that other *criteria*, as to the constituent elements of an action or defense predicated of false representations, have been carefully eschewed, the same being assumed. The boundary line, between the instances of inferences of law deducible from facts and such as are to be drawn by the jury, is often indistinct and difficult to define. This difficulty is enhanced by a habit of strong expression used by the English judges, the natural result of the wide latitude they employ in instructing juries on the facts. The consequence is that *obiter dicta*, and strict decision often become inextricably intermixed.

W. H. Bailey.

[32] 1 Ho. L. Cas. 605.

[33] 17 Ch. Div. (Ch. App.) 301; s. c., 12 Cent. L. J. 375.

[34] 20 Ch. Div. (Ch. App.) 27.

[35] Bower v. Fenn, 90 Pa. 359; s. c., 35 Am. Rep. 662; Stone v. Covell, 29 Mich. 359; Furman v. Titus, 40 N. Y. Sup. Ct. 284; Watson v. Crandell, 7 Mo. App. 233; Loper v. Robinson, 54 Tex. 511; Burgess v. Wilkinson, 13 R. I. 646; Dunn v. White. 63 Mo. 181; Dulaney v. Rogers, 64 *Ib.* 201; Stitt v. Little, 63 N. Y. 426; Taylor v. Leith, 26 Ohio (N. S.), 428.

GUARDIAN AND WARD—RELEASE—FRAUD—BURDEN OF PROOF—RESCISSION—LACHES.

McKONKEY V. COCKEY.

Court of Appeals of Maryland, June 13, 1888.

1. *Guardian and Ward — Release — Fraud.*—If a guardian make a settlement with his ward and secure a release soon after the latter reaches age, a court will presume undue influence was exercised if there is the least injustice done; the fact that worthless stock was given the ward in payment of the balance due will be conclusive evidence of fraud.

2. *Same—Burden of Proof.*—The burden of proof will be on the guardian to show that his release was obtained fairly, and without exercise of the confidence reposed in him, and that he disclosed all the information in his possession.

3. *Same—Rescission — Laches.* — Reasonable time will be allowed the ward to look into the contract of settlement and release, and where the guardian used his influence to lull the ward into the belief the stock was valuable, a lapse of two years will not bar an action to set the release aside.

McSherry, J., delivered the opinion of the court:

In the month of February, 1873, the appellant duly bonded as the guardian of the appellee. At that time the latter was but thirteen years of age, without father or mother; the one having died in 1867, and the other five years thereafter. McConkey, who was the husband of Cockey's eldest sister, was appointed executor of the will of Mrs. Cockey, and in that capacity stated an account in the orphan's court of Baltimore county, showing the balance due to the appellee by Mrs. Cockey, the former guardian. The subsequent settlement of her estate by McConkey placed in his hands as guardian nearly $7,000 additional. The appellee, after the death of his mother, resided with the appellant; and, with the exception of brief intervals, continued to reside there until after his majority. No guardian accounts seem to have been stated in the orphan's court until some months after the settlement made by McConkey with Cockey, upon the latter attaining his majority, which occurred on the 17th day of October, 1880. On the first day of the following month McConkey made up a statement of his accounts, showing an apparent balance of $10,591.30 due to his ward. From that balance several sums were to be deducted, leaving $7,707.97 as the true amount due. In settlement of that sum McConkey transferred and delivered to Cockey, on said 1st day of November, 3 certificates for 150 shares of the capital stock of the American Manufacturing Company, of the nominal value of $15,000; and on the 27th of the same month Cockey executed a release to his guardian, acknowledging the receipt of the said $10,591.30. Cockey subsequently discovered that this stock was valueless, and thereupon filed a bill in the circuit court of Baltimore city against the appellant, who was then, and still is, living in New York; charging that said release had been

obtained by fraud, and praying that it might be vacated, and that McConkey be decreed to pay he sum of $7,707.97, with interest. McConkey answered the bill, and denied its material averments. The circuit court passed a decree granting the relief sought. From that decree this appeal has been taken.

There is no room to question or to controvert, at this day, the well settled and salutary principles which govern courts of equity in dealing with a case like this. "They will not permit transactions between guardians and wards to stand, even when they have occurred after the minority has ceased, and the relation become thereby actually ended, if the intermediate period be short, unless the circumstances demonstrate, in the highest sense of the term, the fullest deliberation on the part of the ward, and the most abundant good faith—*uberrima fides*—on the part of the guardian." 1 Story, Eq. Jur. § 317. Where the transaction occurs within a short time after the ward attains his majority, the *onus* of proof is on the guardian to show everything requisites to make the settlement valid and binding. Smith v. Davis, 49 Md. 489. When, therefore, the appellee attained his majority, it became the obvious duty of the appellant to turn over to him all property belonging to the ward in the possession of the guardian, including the sum of money heretofore mentioned. His plain obligation was to pay that sum of money in cash. Instead of doing this, he transferred to him, while the ward was still living under his roof as a member of his family, and in just fourteen days after Cockey reach his majority, these 150 shares of stock, with emphatic assurances that the stock was an excellent investment, for which he had been recently offered $60 a share; that it was better than gas stock, because that had been repeatedly watered; more profitable than city stock, because that paid a low rate of interest; and safer than railroad securities, because they were dangerous; and that it would pay very handsome dividends. The appellee knew nothing whatever about the stock or the company by which it had been issued. He relied wholly and confidently upon the representations of his guardian, under whose dominion and control he had lived since childhood. McConkey had been but shortly prior to that time the manager or superintendent of the company, and of course knew its condition, the value of its stock, and the extent of its business. The appellee was informed by his guardian that the latter had become possessed of this stock because of its having been pledged to him as collateral security for a loan made by him of the money of the appelee, the borrower of that money having failed to pay the interest on it, and the stock having been taken in conveyance. Between the date of the transfer of this stock and the date of the release, McConkey frequently repeated his representations touching the value of the investment and the large business carried on by the company to the manufacture and the sale of oleomargarine. Under these circumstances, induced by these assurances given by one who had stood toward him for so long a time in the close and intimate relation of guardian, the appellee, without any investigation whatever, accepted this stock in the confident belief that his guardian's statements respecting it were absolutely true. It is abundantly established by the evidence that he relied implicitly upon these representations, and that his acceptance of the stock was influenced exclusively thereby. The representations proved to be untrue. The stock turned out to be utterly valueless. The company had been organized but a few years before with a capital stock of $250,000, the whole of which was absorbed in the purchase of a privilege to use in Maryland and the District of Columbia the Niege patent (the validity of which was in dispute) for the manufacture of oleomargarine. The company had no working capital, and the machinery was purchased with money borrowed on notes indorsed by the directors. These notes were paid out of its subsequent earnings, and the balance of those earnings, were used to conduct and carry on the business. Its operations during some of the winter months showed profits. Several of the former directors testified that they regarded its stock in 1880 as valuable, and as likely to yield profitable results. The witness who was the most pronounced in the expression of these views, held at the time the company was formed, or acquired shortly thereafter, 1,000 shares of its stock; but, notwithstanding his enthusiastic opinions regarding its value, he gradually disposed of the greater part of his holding, until, at the time of the final dissolution of the concern, he was the owner of but 113 shares. Another of these witnesses, by becoming a shareholder, secured the position of superintendent of the factory, at a salary of $2,000 a year; and the firm of which he was a member was made the sole agent for the sale upon commission of the company's products. Whatever may have been the opinions of those thus engaged in the enterprise, and however those opinions may have been influenced by self interest, the fact nevertheless is that early in 1883 the plant, assets, and entire estate of the company were sold under the hammer for $6,500.

It is further shown by the evidence that McConkey did not receive the offer of $60 a share for said stock, as represented by him; but that, on the contrary, shortly before he assigned it to his ward, he had made unsuccessful efforts to sell it at as low a figure as $30 per share. The books of the company disclose the fact that his statements to his ward as to the reason for and the manner of his having originally acquired the stock were equally untrue, and that the actual fact was that he purchased these shares of stock from the very witness to whom allusion has been made as the holder of 1,000 shares. The appellant knew that the company had never paid a dividend. He not only had no authority to purchase this stock, but he procured it in open disregard of an order

of the orphan's court directing him to invest the money quite differently. It may have been—most probably was—done to enable himself to become the company's manager. It is not shown how much he paid for this stock; and although his good faith and his integrity were both assailed by the bill of complaint, and most directly involved in this case, he failed to appear as a witness, either to contradict the testimony impeaching this transaction with his ward, or to explain, if he could, its damaging import. His silence under such circumstance is strongly indicative of the truth of the imputations made against him. He had misappropriated his ward's money, and, when the time came for him to settle, he was without the means to do it. Discovery was imminent, and there was danger of his bond being put in suit. In this dilemma he used his position, his power over, his influence with, and the hold he had upon the confidence of, this inexperienced youth, to force upon him this worthless stock of a purely speculative concern, and to exact a formal release to himself from all accountability whatever. So far from this conduct exhibiting that rigid and signal good faith demanded in such cases, it furnishes strong and convincing evidence of the most reprehensible conduct. He has made no effort to show that the settlement with his ward was fair, or that it was honestly made. Surely a court of equity cannot permit such a transaction, so ruinous and so unfair and unjust, to be sustained.

The bill was filed exactly two years after the execution of the release. This delay has been relied on as a bar to the right of the appellee to relief. Laches is relative. It depends on the facts of each case. Canton v. McGraw, 67 Md. 591, 11 Atl. Rep. 287. For some considerable time after the execution of the release McConkey continued to lull the appellee into the belief that the stock was valuable; and it was not until late in 1882, after the return of the appellee to Baltimore from West Virginia, that he took steps to investigate the matter. During his stay in West Virginia, Cockey was led by the letters of McConkey to still credit the latter's representations. The bill was filed promptly upon the discovery by the appellee that he had been imposed upon and deliberately defrauded by the appellant. There was no unreasonable delay whatever. The decree appealed from being, in our opinion, entirely free from error, will be affirmed, with costs.

NOTE.—It is an ancient principle of law that demands the utmost good faith and fair dealing on the part of a trustee toward the *cestui que trust*, and this rule is enforced with the greatest rigor in the case of guardian and ward.

It does not matter whether the relation exists from appointment, the principle is applicable whenever a person occupies a position which enables him to exert an influence over others trusting in him.[1]

Contracts between guardian and ward will not be permitted to stand if the latter chooses to disaffirm them.[2] And transactions between guardian and ward soon after the latter becomes of age will not be allowed to stand if they are in the least injurious to the ward. Settlements and conveyances will be pried into with a jealous eye, while gifts to guardian will be declared void.[3]

Decisions are numerous on the dealings between guardian and ward, and there is little difference of opinion on most points. Where grants have been set aside, accounts opened, settlements investigated and restitution ordered, transactions from which the minor has sought release, have occurred, either immediately after the minor reached majority or while the influence continued, and a full disclosure of all the facts was not made. Nice moral distinctions will not be drawn so that the parties can never be emancipated from the confidential relation; but the relation must be fairly deemed to have ended before dealings can be conducted upon like principles as between strangers;[4] to render the dealings fraudulent the influence must have continued.[5] And undue influence will be presumed if the transactions occur about the time of "emancipation," or before a complete settlement is made.[6]

If the ward has competent, independent and friendly advice, the court may permit the contract to stand; but the trustee must disclose whatever information he possesses.[7] Courts have interfered in cases where relatives by their position have been guilty of abuse of the trust reposed.[8]

A distinction must be made between an action to compel an accounting and an action to recover the balance due as shown by the final accounting. A further distinction exists where property is accepted in settlement of the amount due and the ward brings an action for relief. The first is not a suit, it is merely a *mode* provided to ascertain the amount due; the second is a suit;[9] and the third is a suit for relief from a fraudulent contract. The mode of accounting not being a suit, is not affected by the statute of limitations, but it is dependent on the life of the bond.[10]

It is the duty of the sureties to see that the guardian performs his duty faithfully; they cannot excuse themselves from liability by neglecting to attend to

[1] Wharton on Contracts, § 254; Tate v. Williamson, L. R. 1 Eq. 536; Atwood v. Chapman, 68 Me. 38.

[2] Story's Eq., § 317.

[3] Story's Eq., § 316; Wharton on Contracts, §§ 159-61, 254.

[4] Dawson v. Massey, 1 B. & B. 226; Gibson v. Jeyes, 6 Ves. 267; Coles v. Trecothick, 9 Ves. 234.

[5] Pierce v. Waring, 2 Ves. 260; Wright v. Proud, 13 Ves. 136.

[6] Archer v. Hudson, 7 Beav. 551; Gallatain v. Cunningham, 8 Cow. 361; Kirby v. Taylor, 6 Johns. Ch. 248; Eberts v. Eberts, 55 Pa. St. 119; Stanley's Appeal, 8 Pa. St. 431; Meek v. Perry, 36 Miss. 190; Hunter v. Atkyns, 3 Myl. & Keen, 113; 2 Greenleaf Ev. 749, 690; Garvin v. Williams, 50 Mo. 206; Breed v. Pratt, 18 Pick. 117; Hill on Trustees, 900; Perry on Trusts, § 851; 1 Story's Eq. (Red. Ed.), § 322 a; Wedderburn v. Wedderburn, 4 Myl. & Cr. 40; Gale v. Wells, 12 Barb. 84; Greenawalts *Ex parte*; 2 Clark Pa. 1; Say v. Barnes, 4 S. & R. (Pa.) 112; Hoppin v. Tobey, 9 R. I. 42; Kraft v. Kaonelg, 3 S. W. R. (Ky.) 803.

[7] Archer v. Hudson, *supra;* Malone v. Kelley, 54 Ala. 532; Kerr on Frauds, 151.

[8] Archer v. Hudson, 7 Beav. 551; Hatch v. Hatch, 9 Ves. 297; Malone v. Kelley, *supra;* Hoppin v. Tobey, 9 R. I. 43; Harvey v. Mount, 8 Beav. 447; Aylward v. Kearney, 2 Ball. & B. 478; 2 Pomeroy Eq. Jur., § 961.

[9] Carter v. Tice, 120 Ill. 287; Gilbert v Guptill, 34 Ill. 137.

[10] Carter v. Tice, *supra;* Gilbert v. Guptill, *supra;* Wood on Limitations, 117.

this duty.[11] Guardians appointed in courts of chancery are controlled by a different rule.

But what is the rule when an action is brought by the late ward to set aside a release or to recover for worthless property accepted in settlement? From the nature of the case an invariable rule cannot be found. Upon principle, we would say, that since the law requires a guardian to make a fair and an absolutely honest settlement, and since the sureties are bound in case of breach of faith, a reasonable time will be allowed to test the *bona fide* character of the accounting or payment. After a reasonable time the ward will be presumed to have attained sufficient experience and independence to judge of the character of the transaction, and unless he can show fraud after a reasonable time the trustee and his sureties will be discharged. But courts are not chary of the time allowed. The decisions say a party will not be estopped by an affirmance before a discovery of the fraud,[12] reasonable time will be allowed to make discovery;[13] but where fraud is perceived disaffirmance should be prompt,[14] but acquiescence is not to be imputed too readily.[15]

In Hatch v. Hatch,[16] court set aside a will which had been in operation over twenty years; in Malone v. Kelley,[17] eight years had elapsed when application for relief was made and granted; in Kirby v. Taylor,[18] eighteen months had passed; in Luken's Appeal,[19] the court said: "The ward will not be allowed to call his guardian to account after the lapse of nearly four years, as in this case, without designating some mistake, or specifying a fraud alleged to have been committed and undertaking to prove the same in some way." In Hunter v. Lawrence,[20] after eight years the court granted relief. "There is a wide difference between a discharge and a donation. Released by a ward of his principle without the knowledge of the surety, and acquiescing in that release for twenty months, and not setting up any pretense of fraud or undue means of procuring it, will be a complete exonoration of the surety."[21]

In Carter v. Tice,[22] court set aside a release after the elapse of five years. In this case the court, in its opinion, adverts to the duty of sureties. If the guardian's influence continues, time will not run against the ward.[23]

The question of laches is discussed in a suit brought against the heir of a surety six years after a settlement was made in the case of the People v. Brooks.[24]

[11] Hunter v. Lawrence, 11 Gratt. (Pa.) 111; Kirby v. Taylor, 6 Johns. Ch. 242; Carter v. Tice, *supra*.

[12] Doggett v. Emerson, 3 Story, 740; Pratt v. Phillbrook, 41 Me. 132; Mackinley v. McGregor, 3 Whart. R. 369; Pierce v. Wilson, 34 Ala. 596.

[13] Partridge v. Usborne, 5 Russ. 195; Torrance v. Bolton, L. R. H. 8 Ch. App.; Story on Contracts, § 622.

[14] Gales v. Bliss, 43 Vt. 299; Bulkly v. Morgan, 46 Conn. 393; Mason v. Bovet, 1 Denio, 69; William v. Ketchum, 21 Wis. 432.

[15] Pence v. Langdon, 99 U. S. 581.

[16] 9 Ves. Jr. 292.

[17] *Supra*.

[18] *Supra*.

[19] 7 W. & S. (Penn.) 48.

[20] 11 Gratt. (Va.) 11.

[21] Kirby v. Taylor, *supra*.

[22] 120 Ill. 280.

[23] Carter v. Tice, *supra;* 2 Perry on Trusts, § 805; Hayden v. Stone, 1 Duv. 395.

[24] 14 N. E. R. (Ill.) 39.

FRAUDS, STATUTE OF—AGREEMENTS RELATING TO LAND — PART PERFORMANCE — FRAUD.

PEEK V. PEEK.

Supreme Court of California, September 22, 1888.

Frauds, Statute of—Agreements Relating to Land —Part Performance — Fraud.—Plaintiff's father induced defendant to marry him upon an oral promise that in consideration thereof, he would convey certain lands to her, but upon the morning of the wedding he conveyed the lands without consideration to the plaintiff, and soon after the marriage deserted his wife. An action of ejectment was instituted by the plaintiff and a cross-complaint filed by the defendant in which he stated the foregoing facts, prayed for specific performance of the oral antenuptial contract, and for a conveyance of the land by the grantee of her husband: *Held*, that the defendant having been induced by the grantor to irretrievably alter her condition, she was entitled to the relief sought, and that the statute of frauds did not apply.

HAYNE, C., delivered the opinion of the court: Ejectment, with a cross complaint by defendant praying for a conveyance of the legal title. The facts are as follows: One L. R. Peek orally promised the defendant that if she would marry him, he would, on or before the marriage, convey to her the property in controversy. She relied upon this promise, and married him "for no other reason or consideration." The conveyance was not made. He put it off by excuses and protestations, and on the morning of the marriage, without the knowledge of defendant, conveyed the property to his son by a former marriage, who was then a boy about ten years old. The marriage with defendant did not prove a happy one, and after a year's residence upon the property Peek deserted the defendant, and the son, Lee Peek, brought the present action to recover possession of the property. The court below gave judgment for the plaintiff, and the defendant appeals.

The foundation of the defendant's claim being the promise of L. R. Peek, the first question to be considered is whether such promise was of any validity. It is clear that it was within the statute of frauds. But it is contended that there was such part performance and fraud as would induce a court of equity to give relief, notwithstanding the statute. We think that if the actual fraud of L. R. Peek be left out of view, there was no such part performance as would take the case out of the statute. They may undoubtedly be cases of a part performance of oral antenuptial agreements sufficient to warrant their enforcement in equity. See Neale v. Neales, 9 Wall. 1. But it seems to be generally agreed that the marriage alone does not amount to such part performance. See Ath. Mar. Sett. 90; Browne, St. Frauds, (4th Ed.) § 459; Henry v. Henry, 27 Ohio St. 121. With reference to this subject, Story says: "The subsequent marriage is not deemed a part performance, taking the case out of the statute, contrary to the

rule which prevails in other cases of contract. In this respect it is always treated as a peculiar case, standing on its own grounds." 2 Eq. Jur. § 768. Nor does the fact that the defendant resided with her husband upon the property make any difference. The reason assigned for holding possession to be part performance is that, unless validity be given to the agreement, the vendee would be a trespasser. But it is manifest that this reason would not apply where the vendor was the husband and the vendee the wife, living with him upon the property. The possession which is referred to by the cases which hold it to be sufficient part performance is a possession exclusive of the vendor. Browne, St. Frauds (4th Ed.) § 474. But the fact that the marriage was brought about by the actual fraud of L. R. Peek seems to us to make a difference. There can be little doubt upon the record that there was actual fraud on his part. He denies that he made any promise to convey the property in controversy. But the court finds that he did make it, and, taking this to be the fact, we think that the defendant's account as to the time of the promise, and of the reason she married him without the conveyance, must be accepted as the true one. According to her testimony, the promise was repeated up to the time of the marriage, and she was induced to have the ceremony performed before the conveyance was executed by means of excuses and protestations, which must have been made for the purpose of deceiving her. On the day before the marriage, he pretended that he was going to have the deed executed at once. He said to the defendant: "The officers are in town that are required to draw up the papers. Come to-night, and I will have the place deeded to you, and the $15,000 put in your name. He left me in the hotel, and in a few minutes he came and told me that Mr. Frank McKenny was out of town, and it could not be attended to that evening." The next day "he said he would have the deeds drawn, and he went up and said that they were all busy at the court house and he couldn't have it done at that time; and he called on me again with the same story, that the gentlemen at the court house were busy, and that he could not have the deeds fixed, and that I could rest contented." He, however, succeeded in inducing the defendant to marry him that evening by protesting that the papers should be executed as soon as practicable. After the marriage he kept up for a short time the pretense that he was going to fulfill his promise, but never did so. It seems clear that he never intended to have the deed executed. The story that he could not have it done because the officers at the court house were busy is ridiculous. On the very day that he was making this excuse he got a deed executed conveying the property to his son. And the fact that he induced the defendant to marry him by promising to convey the property to her, when at that very time he was conveying it to somebody else, seems conclusive as to his fraudulent intent. We think, therefore, that the conclusion of the court below, that the deed was not made "with any fraudulent intent whatever," is not sustained by the facts. This fraud on the part of L. R. Peek, by which he induced the defendant to irretrievably change her condition, seems to us to be ground for relief in equity. It has been laid down that if the agreement was intended to be reduced to writing, but was prevented from being so by the fraudulent contrivance of the party to be bound by it, equity will compel its specific performance. 2 Story, Eq. Jur. § 768; Ath. Mar. Sett. 85. And the recent case of Green v. Green, 34 Kan. 740, 10 Pac. Rep. 156, is exactly in point. In that case a widow, owning 160 acres of land, orally promised a man that if he would marry her, she would devote the proceeds of the land to their joint support. Relying upon this promise, he married her, but subsequently ascertained that on the eve of the marriage she had conveyed the property to her children by former marriage, "in consideration of love and affection." The court held that he could maintain an action to have the deed set aside on the ground of fraud. Compare, also, Petty v. Petty, 4 B. Mon. 215.

We do not say that the mere fraudulent omission to have an agreement reduced to writing would of itself be ground for specifically enforcing the agreement. But where the fraudulent contrivance induces an irretrievable change of position, equity will enforce the agreement; and the marriage brought about by the fraudulent contrivance is a change of position, within the meaning of the rule. In Glass v. Hulbert, 102 Mass. 24, in reasoning, upon somewhat different facts, to the conclusion that, in order to be ground for the enforcement of the oral contract, the fraudulent contrivance must have induced some irretrievable change of position the court said: "The cases most frequently referred to are those arising out of agreements for marriage settlements. In such cases, the marriage, although not regarded as a part performance of the agreement for a marriage settlement, is such an irretrievable change of situation that, if procured by artifice, upon the faith that the settlement had been made, or the assurance that it would be executed, the other party is held to make good the agreement, and not permitted to defeat it by pleading the statute." This, we think, is a correct statement of the law.

It is argued, however, that the plaintiff knew nothing of the fraud, and therefore is not affected by it. But it is very clear that a mere volunteer, however innocent, cannot retain the fruits of the fraud, and we think that with reference to at least a portion of the property the plaintiff was a mere volunteer. There are two grounds upon which it is urged that he was a purchaser for valuable consideration. In the first place, it is said that his father was his guardian, and as such owed the plaintiff a balance of $148, and that this sum was part of the consideration of the deed. But there was no consent of the ward to such an application

of the sum due him. His testimony is as follows: "I never paid my papa any money for the deed that he showed me. I do not know anything about how much money was mentioned in the deed as being the consideration for it. I never knew anything about that. Nothing of that kind passed between us. No property or money or anything. I did not have any property at that time to give him. If I had any, I didn't know it." So that, even if the ward could have consented to such an appropriation of his funds without the sanction of the probate court, there was no such consent. Nor was there any sanction of the probate court. It may be that upon a proper settlement of the guardian's accounts a much larger sum will be found to be due from him. He cannot get rid of liability to his ward in that way. In the next place, it is said that L. R. Peek, promised his first wife upon her death-bed that the son should have the property. But it is clear that such promise was a mere moral, and not a valuable, consideration. It did not prevent the plaintiff from being a volunteer. See, generally, Lloyd v. Fulton, 91 U. S. 484, 485. Finally, it is argued that the first wife furnished half of the money with which the property was purchased, and that a trust resulted to her in consequence. This was the view taken by the trial court. But, conceding that a trust did result, it did not affect the whole property, but at most only a portion corresponding to the proportion of the price which she furnished; and the portion which it did affect was in sense a consideration for the deed which is involved here. Upon the theory that a trust resulted to the first wife, the plaintiff must claim as her successor in interest. It does not appear that she left a valid will in his favor, and if not he could succeed to a portion only of her interest. Furthermore, it might become a question as to whether the defendant took with notice of the son's equitable interest, and as to how she would be affected thereby. These latter questions have not been argued, and we think they should be left open upon the retrial. It is deserving of serious consideration whether L. R. Peek, who was a party to the contract which the defendant relies upon, should not have been joined as a party to the cross-suit. But the objection as to his non-joinder as a defendant to the cross-complaint was not taken by demurrer, and is not argued in the respondent's brief, and for these reasons we express no opinion concerning it. We therefore advise that the judgment and order denying a new trial be reversed, and the cause remanded for a new trial.

JUDGMENT — COLLATERAL ATTACK — HUSBAND AND WIFE — MECHANIC'S LIEN — PROCEEDING IN REM.

SHRYOCK V. BUCKMAN.

Supreme Court of Pennsylvania, October 1, 1888.

Judgment—Collateral Attack—Husband and Wife—Mechanic's Lien—Proceedings In Rem.—An action to enforce a mechanic's lien is a proceeding *in rem*. A judgment obtained in such an action cannot be collaterally attacked on account of the coverture of the defendant, although that coverture appears in the deed under which the defendant holds title.

CLARK, J., delivered the opinion of the court:

It is conceded that prior to 10th February, 1857, the title in fee to the premises in dispute was in Joseph H. Bonsall; that on that day Bonsall conveyed the same to Jane M. Reynolds, wife of Charles M. Reynolds, the consideration expressed in the deed being $2,500; that Charles M. Reynolds died in the year 1878, and Jane M. Reynolds in 1881, and that the plaintiffs are her heirs at law. On 10th September, 1857, six months or more after the deed was recorded, Samuel S. Richie filed a mechanic's lien against the premises, designating Jane M. Reynolds as the owner or reputed owner, and Charles M. Reynolds as the contractor. There is no averments in the claim that Jane M. Reynolds was the wife of Charles, and, if there was, it is not alleged therein that the labor was done and materials furnished upon her authority, or with her consent, or for the improvement of her separate estate. The claim was therefore fatally defective and void; and upon the trial of the *scire facias*, the defendants, without doubt, upon a plea and due proof of coverture, would have been entitled to a judgment. Dearie v. Martin, 78 Pa. St. 55; Lloyd v. Hibbs, 81 Pa. St. 306; Schriffer v. Saum, *Id.* 385. But no plea of coverture was interposed on the the trial of the *scire facias*. There was no appearance by the defendants, and judgment was entered for want of an affidavit of defense. The fact that Jane M. Reynolds was a *feme covert* was sufficient to invalidate the lien; but that fact does not appear, either in the claim, or in the pleadings on the *scire facias* issued upon it. It has been held that a judgment on the bond of a married woman is, as a general rule, absolutely void, and a sale of her real estate upon it does not divest her title. Dorrance v. Scott, 3 Whart. 309; Caldwell v. Walters, 18 Pa. St. 79; Vandyke v. Wells, 103 Pa. St. 49. There are, of course, certain contracts affecting the enjoyment of her separate estate, or the support of her family, which a married woman may legally make. Lippincott v. Hopkins, 57 Pa. St. 328; Lippincott v. Leeds, 77 Pa. St. 420; Botts v. Knabb, 116 Pa. St. 28, 9 Atl. Rep. 33. The party with whom she thus contracts has a full remedy against her for enforcement of his rights, and the judgment, whether by default, confession, or verdict, has all the leading characteristics of a judgment against a person *sui juris*.

Swayne v. Lyon, 67 Pa. St. 436. But every judgment *in personam* against a married woman, excepting where it is given under special circumstances for the purchase money of real estate, which does not show her liability on its face, is void, even though it be confessed in open court upon a pending suit. Swayne v. Lyon, *supra;* Fenn v. Early, 113 Pa. St. 264, 6 Atl. Rep. 58. And, as the judgment is absolutely void, it follows that a sale of her property upon it would be an invalid sale. Hecker v. Haak, 88 Pa. St. 239; Hugus v. Glass Co., 96 Pa. St. 160. A somewhat different rule would seem to have been applied, however, where the sale is upon a judgment obtained against a married woman on proceedings *in rem*. In Hartman v. Ogborn, 54 Pa. St. 120, a married woman executed a mortgage in her maiden name. A *sci. fa.* was subsequently issued against the mortgagor by that name, without joining her husband, and judgment was recovered on a return of two *nihils*. Upon a *levari facias* the land was sold by the sheriff, and in an ejectment by the wife against the purchaser it was held that a *scire facias* on a mortgage is a proceeding *in personam* only as it is directed against a mortgagor entitling him to the notice prescribed by law, but for the rest it is a proceeding *in rem* to foreclose the equity of redemption, and convert the pledge into money; that the transfer of the title is effected by the judgment and sale thereon, and not by the mortgage; that, although the mortgage was undoubtedly void, yet the purchaser took a good title; and that the validity of the mortgage could not be inquired into in an ejectment for the mortgaged premises. "Neither the judgment nor the proceedings under it," said Chief Justice Woodward in that case, "have been questioned by a writ of error, or motion to open or to set them aside in any other manner whatever, and the only question upon the trial of this cause was whether they could be impeached collaterally. * * * What avails the objection that the mortgage was null and void, or for any reason was inadequate as an instrument of transfer? The inadequacy of the mortgage might well have been urged against the suit by *scire facias*, but after that has been permitted to ripen into a judgment, the mortgage is merged in it, and is no longer open to attack." In Butterfield's Appeal, 77 Pa. St. 197, Catharine Weyman, a married woman, who had separated from her husband, and had been declared a *feme sole* trader, executed a mortgage to Butterfield for property, the title to which was in her name. A *sci. fa.* issued against her, and a judgment was recovered on the mortgage. The land was subsequently sold on a lien against both husband and wife. In the distribution of the proceeds of the sale, the question was as to the right of Butterfield to participate. In the determination of that question this court said: "If it be conceded that the wife had no power to execute the mortgage as a *feme sole* trader, and that the mortgage was void because the husband did not join with her in its execution, it does not follow that the judgment obtained against his wife on the mortgage was a nullity. On the contrary, the execution of the mortgage is conclusively established by the judgment in the *scire facias* upon it. Edmonson v. Nichols, 22 Pa St. 74. The mortgage is merged in the judgment, and, even if null and void, cannot be collaterally impeached. Hartman v. Ogborn, 54 Pa. St. 120. In this respect the judgment on a mortgage under the act of 1705, which is a proceeding *in rem*, differs from a judgment *in personam* on the bond of a married woman which is absolutety void. Doubtless the judgment on the mortgage was voidable, and might have been set aside or reversed at the instance of the wife; but until directly avoided by her, its validity cannot be inquired into, or impugned collaterally, except for fraud. Lowber's Appeal, 8 Watts & S. 387; Billings v. Russell, 23 Pa. St. 189; Yaple v. Titus, 41 Pa. St. 195. The judgment on the mortgage, then, cannot be disregarded, but must be treated as conclusive in this proceeding. Thompson's Appeal, 57 Pa. St. 175. If so, it bound the wife's interest in the land, and is entitled to so much of the fund as was produced by the sale thereof." To the same effect is the very recent case of Michælis v. Brawley, 109 Pa. St. 7, where it was held that the validity of a mortgage by a married woman, although so improperly and defectively acknowledged as to be void, cannot, after a judgment on the *scire facias*, and sale of the mortgaged premises, be questioned in a collateral action of ejectment.

A mechanic's lien is not of necessity founded on any personal responsibility. The proceeding upon it is a proceeding *in rem*. The claimant can only look for indemnity to the building which is incumbered by it. Sullivan v. Johns, 5 Whart. 366; Holden v. Winslow, 19 Pa. St. 449. No one is interested as defendant, except as owner of the property against which the lien is sought to be established, for that only is chargeable with either debt or costs. Holden v. Winslow, *supra;* College v. Church, 1 Watts & S. 462. The same legal principles which, as against a married woman, will give conclusive effect to a judgment and sale on an invalid mortgage, must, by parity of reasoning, under similar circumstances, give like effect against her to a regular judgment and sale on a mechanic's lien. In neither case, we think, can the conclusiveness of a judgment be called collaterally in question. In both cases the proceeding on the *scire facias* is strictly *in rem;* the defendants being entitled to notice only as they represent the ownership of the premises charged. In this case it does not appear in the claim filed that Jane M. Reynolds was the wife of Charles M. Reynolds. The former is designated as the owner, and the latter as the contractor. The *scire facias* is in the same form, and the judgment is so entered. The *levari facias* pursues the judgment, and the sale and conveyance by the sheriff is in accordance therewith. There was no motion to strike of the lien, no plea of coverture filed, no application to

open the judgment or to stay the sale; in fact, nowhere throughout the entire proceedings does it appear that Jane M. Reynolds was a married woman. The proceedings are regular throughout; they disclose a valid judgment and a regular sale. It is true, the defendants were not personally served; but in practice the return of two *nihils* is equivalent to a return of *scire feci*. Hartman v. Ogborn, *supra*. It is said however, that although the fact that Mrs. Reynolds was a *feme covert* does not appear upon the record of the lien, or in the proceedings thereon, yet the conveyance by Bonsall on the 10th February, 1857, was made to Jane M. Reynolds, wife of Charles M. Reynolds, and was recorded ten days thereafter; and that Swanzey, the purchaser, must therefore be assumed to have had knowledge, by construction, of the marriage relation subsisting between them at the time of the sale. We do not understand the application of the principles stated to be contingent upon any question of notice. The general principle is that a judgment of a court of competent jurisdiction cannot be questioned collaterally unless for covin or collusion. Postens v. Postens, 3 Watts & S. 127. Such a judgment is conclusive of every fact on which it must necessarily have been founded. Farrington v. Woodward, 82 Pa. St. 259. Judgments *in personam* against married woman, however, except under very special circumstances appearing upon the record, or where they are for purchase money of real estate, have on grounds of public policy been declared void, although the fact of coverture may not be disclosed in the record, and a sale of her real estate thereon will confer no title. But that policy has never yet been extended to a sale of real estate upon a judgment regularly entered, in proceedings *in rem*, against a defendant who, *dehors* the record only, is shown to have been a married woman. It is true that in the reasoning of the learned judge who delivered the opinion in Hartman v. Ogborn, *supra*, the question of notice is referred to as effecting the equity of the case; but the conclusiveness of the judgment, and the effect of an execution and sale upon it, is a matter wholly independent of any question of mere notice. This is fully illustrated in Butterfield's Appeal, *supra*, where the mortgage was made by a *feme sole* trader, as such, which of course implied the fact of coverture; yet, notwithstanding this, it was held that the due and proper execution of the mortgage was conclusively established by the judgment on the *scire facias* upon it. So in this case the judgment on the *scire facias* conclusively establishes the validity of the lien, and we are not to presume anything against the validity of the sale, if the judgment can be supported on any theory. Coverture at the date of the deed cannot, in the face of this judgment, impute the same disability at the filing of the claim; and we are not to assume the identity of of the husband with the contractor, to invalidate a judgment which is conclusive on all questions of fact *dehors* the record. We are of the opinion that the sheriff's sale divested the title of Jane M. Reynolds, and that the plaintiffs have exhibited no title which would entitle them to recover. In this view of the case, it is not necessary for us to consider the remaining assignments of error. Judgment affirmed.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ADMIRALTY—Practice—Cross Demands. ——Where a liable has been filed in the southern district of New York, against a vessel for damages arising out of a collision, the owner of the vessel so liable may begin an independent action for his own damage in another district and is not obliged to resort to a cross-libel in such southern district.— *Brooklyn Terry Co. Morrisania*, U. S. C. C. (N. Y.), July 3, 1888; 35 Fed. Rep. 558.

2. ADMIRALTY—Practice— Trial Evidence.—— Claimant laying great stress on the presumption arising from the fact that a hatch-cover which libelant claimed had broken under his weight, was not produced on the trial, and it appearing that the hatch-cover was in claimant's possession, the court ordered the case kept open in order that it might be produced.—*Devine v. The Tiverton*, U. S. D. C. (N. Y.), June 11, 1888; 35 Fed. Rep. 529.

3. ADMIRALTY — Proceedings — In Rem and In Personam. —— An action in admiralty *in rem* is not a bar to an action *in personam* growing out of the same facts, and the respondent in the action *in personam* is not entitled to a stay pending an appeal in the action *in rem*. —*Providence Ins. Co. v. Wager*, U. S. D. C. (N. Y.), Feb. 28, 1888; 35 Fed. Rep. 364.

4. AGENT—Violation of Instructions— Liability.——A general agent notified the clerk of the local agent of the insurance company not to insure in a certain block. The clerk made such an entry in the books, which the local agent saw, but disregarded because it was so general: *Held*, that the local agent was bound by the

notice. — *Hanover F. I. Co. v. Ames*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 300.

5. APPEAL—Bond—Sureties — Rents and Profits. —— The sureties on an appeal bond are not liable for the rents and profits received by the appellate pending the appeal, if the appellee could not have got possession, had proceedings not been stayed. — *Carver v. Carver*, S. C. Ind., Sept. 28, 1888; 18 N. E. Rep. 37.

6. APPEAL—Justice—Remittitur.—— Under Iowa law, when the amount of a judgment recovered before a justice of the peace is reduced to less than $25 by a *remittitur*, filed before the judgment is entered, an appeal cannot be taken. — *Schultz v. Chicago, etc. R. R.*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 289.

7. APPEAL—Lunatic—Poor Person.—— One adjudged *non compos mentis* may prosecute a writ of error from such decision, and when her estate is in the hands of a guardian appointed in such proceedings she can prosecute under the oath prescribed for poor persons. — *Davis v. Norrill*, S. C. Tenn., Sept. 27, 1888; 9 S. W. Rep. 193.

8. APPEAL—Objections not Issued. —— When a case was tried without objection to the sufficiency of the complaint, such objection cannot be raised for the first time in the appellate court. — *Martyn v. Lamar*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 285.

9. APPEAL—Time—Report of Master. —— When in a mechanic's lien suit the chancellor has decided, that complainant is entitled to the contract price for the construction of the house, less the cost of completing it, he may allow an appeal, though the master has not reported on such cost. — *Andrews v. Warner*, S. C. Tenn., Sept. 14, 1888; 9 S. W. Rep. 194.

10. APPEAL—Weight of Evidence. —— The evidence was sufficient to support the verdict.— *Dennis v. Knight*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 304.

11. ASSIGNMENT FOR BENEFIT OF CREDITORS—Partnership.——Under the Georgia statute of assignment for benefit of creditors, an assignment made by a surviving partner, which does not show on its face that the firm was insolvent, is void. — *August v. Callaway*, U. S. C. C. (Ga.), May 15, 1888; 35 Fed. Rep. 381.

12. ASSIGNMENT FOR CREDITORS — Mortgage. —— A mortgage of all one's personal property and a crop to be grown during the year, being substantially all the debtor's property inures, under Alabama law, as a general assignment to the benefit of all his creditors, save as to such advances made and contracted for contemporaneously with its execution. — *Collier v. Wood*, S. C. Ala., July 19, 1888; 4 South. Rep. 840.

13. ASSUMPSIT—Money Had and Received.—— A sold land to B on which there were taxes and a mortgage, which it was A's duty to pay. He gave B his note for the amount, and B agreed to pay them. B did not pay them, but A's note was paid: *Held*, that A could recover the amount paid on the note. — *Messenger v. Votan*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 280.

14. ATTACHMENT—Wrongful—Expenses. ——Counsel fees and other expenses, not taxable as costs, paid or incurred in defending against a wrongful attachment, are not recoverable as damages on a statutory recognizance for recovery of "such damages as the court may adjudge."—*Jacobs v. Monongahala Bank*, U. S. C. C. (Pa.), March 31, 1888; 35 Fed. Rep. 395.

15. BOUNDARIES — Navigable Waters — Deed — Construction. —— Circumstances stated under which a conveyance of land bounded by navigable waters was held to convey no part of the land covered by water below high water mark.—*Roberts v. Baumgarten*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 96.

16. CARRIERS—Passenger — Receiver — Mistake. —— Where a passenger receives a ticket in which there was a mistake and holds it for four months, during which time the railroad passes from the hands of a receiver to that of the original company: *Held*, that the company was not liable for refusing to honor the ticket, nor responsible for the mistake of the receiver's agent. — *Godfrey v. Ohio, etc. Co.*, S. C. Ind., Oct. 9, 1888; 18 N. E. Rep. 61.

17. CHATTEL MORTGAGE — Priority. —— A chattel mortgage of personal property is superior to a prior real estate mortgage, in common form, covering the same property, where the mortgagee in the chattel mortgage is in the position of an innocent purchaser.— *Howard v. Witters*, S. C. Vt., Sept. 25, 1888; 15 Atl. Rep. 303.

18. CLERK OF COURT—Fees—Recording.—— The clerks of the United States circuit courts can collect their fees for recording proceedings in a law case from the plaintiff where judgment is in plaintiff's favor, under a State law permitting clerks of the State court to do so. —*Merriscon v. Bernard Township*, U. S. C. C. (N. J.), May 25, 1888; 35 Fed. Rep. 400.

19. COLLISION—Fog—Identity of Vessel. —— A vessel lying at a pier was run into and damaged, but owing to the dense fog then prevailing the identity of the assailing vessel could not be fixed. That steamboat annex No. 3, about the time of the injury ran into something: *Held*, to be insufficient to sustain the libel. — *Hogz v. The Penn. Annex No. 3*, U. S. C. C. (N. Y.), July 5, 1888; 35 Fed. Rep. 560.

20. COLLISION—Original Fault.—— When the original fault of a vessel leads to a collision with another, an error of such other in an effort to avoid an injury will not excuse the one originally in fault. — *Wright v. The Alaska*, U. S. C. C. (N. Y.), July 3, 1888; 35 Fed. Rep. 555.

21. COLLISION—Vessel at Anchor—Towing.——A towboat is liable for the damage resulting from a collision between the boats of her tow, and a vessel at anchor in a proper place. — *Orison v. The Syracuse*, U. S. D. C. (N. Y.), May 12, 1888; 35 Fed. Rep. 367.

22. COLLISION—Want of Signals—Leading Vessel.—— In the absence of signals on the part of a following ship, the leading ship is not liable for a sheer which results in a collision. — *Coffin v. The Osceola*, U. S. C. C. (N. Y.), July 9, 1888; 35 Fed. Rep. 559.

23. COLLISION—Lights— Moored at Wharf. —— Boats moored in the usual way alongside a wharf, and not in the way of other boats, are not required to exhibit lights. — *Hadden v. The J. H. Rutter*, U. S. D. C. (N. Y.), May 22, 1888; 35 Fed. Rep. 365.

24. CONTRACT — Consideration. —— Where plaintiff was the holder of two notes executed without consideration by the defendant and agreed to extend the time payment upon the first of the notes: *Held*, that defendant was liable on both notes.— *Brown v. First Nat. Bank*, S. C. Ind., Oct. 10, 1888; 18 N. E. Rep. 56.

25. CONTRACT—Indefinite—Part Acceptance.——Where A agreed by parol to take railroad ties from B, but no definite amount was specified, the acceptance of a certain number does not obligate A to take any more. — *Russell v. Wisconsin, etc. R. R.*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 302.

26. COUNTIES— County-seat — Injunction. —— An injunction is not the proper remedy for correcting the removal of the county-seat made by county officers pursuant to a county-site election. —*McKinney v. Board of Commrs.*, S. C. Fla., Aug. 9, 1888; 4 South. Rep. 855.

27. COUNTIES— Presentation of Claim — Jurisdiction— Statute.—— The law of Indiana withholds jurisdiction from courts of all claims against counties which have not been presented to the county commissioners and been disallowed by them. — *Hancock County v. Leggett*, S. C. Ind., Sept. 28, 1888; 18 N. E. Rep. 55.

28. COUNTY—Liability—Religious Societies— Constitutional Law. —— Circumstances stated in which it was held that public money appropriated by law to the support and education of certain girls could not be paid to the managers of Roman Catholic corporations, being contrary to the constitutional provision that public money should not be applied to the uses of secretarian institutions. — *Cook County v. Chicago, etc. Co.*, S. C. Ill., Sept. 28, 1888; 18 N. E. Rep. 183.

29. COVENANTS—Running with Land— Party Walls.——

An agreement by the owner of a lot with an adjoining owner to pay for a share of party wall, when he should have occasion to use it, is personal, and does not run with the land.— *Nalle v. Paggi*, S. C. Tex., June 19, 1888; 9 S. W. Rep. 205.

30. CRIMINAL LAW—Appeal—Practice—Evidence.—— The exclusion of evidence in a criminal case must be excepted to on the trial, or it will not be considered on appeal.— *Delhaney v. State*, S. C. Ind., Sept. 26, 1888; 18 N. E. Rep. 49.

31. CRIMINAL LAW—Confessions—Admissions.—— Oral declarations and admissions, claimed to have been made by the accused, should be viewed with caution, and remarks made by him at the time of arrest or afterwards should be fairly construed in view of all the facts and surroundings. They do not preclude the jury from considering other facts in the case.—*U. S. v. McKenzie*, U. S. D. C. (Cal.), Oct., 28, 1888; 35 Fed. Rep. 826.

32. CRIMINAL LAW — Evidence. —— Evidence that a defendant ran to avoid arrest on a criminal charge is admissible. — *Commonwealth v. Brigham*, S. J. C. Mass., Oct. 17, 1888; 18 N. E. Rep. 167.

33. CRIMINAL LAW—False Pretenses— Instructions.—— An instruction that, if certain representations were made by the accused, and were known by him to be false, and by means thereof he obtained the property, he is guilty of obtaining property under false pretenses, a reversible error, when there is no evidence that the party defrauded was thereby induced to part with his property. — *State v. Stout*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 275.

34. CRIMINAL LAW—Fine—Commitment.——Where in a case of larceny the convict is sentenced to pay a fine and commited till it is paid, the fine is the penalty, and the commitment only a process for enforcing its payment. — *Ex parte Bryant*, S. C. Ala., Aug. 11, 1888; 4 South. Rep. 854.

35. CRIMINAL LAW—Gaming— Horse-race. —— Under Minnesota law, a horse-race is a game, and betting thereon is punishable under section 296 Pen. Code. — *State v. Shaw*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 305.

36. CRIMINAL LAW—Indictment—Clerical Error.——A misrecital in the caption of an indictment of the date of its finding by inserting 1885 for 1888, is not fatal, when from the whole record the error appears to be merely clerical.— *U. S. v. Barnemann*, U. S. C. C. (Cal.), July 31, 1888; 35 Fed. Rep. 824.

37. CRIMINAL LAW—Indictment— Election.——Where an indictment charges in one count manslaughter in the first degree and in another manslaughter in the second degree, the prosecution will not be compelled to elect upon which count it will proceed. — *People v. McCarthy*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 128.

38. CRIMINAL LAW—Nol-pros—Venire List.——Where a party is indicted and notice of the venire list is served upon him, and the indictment is *nol pros'd*, and an information for the same offense is filed against him at the same term of court, it is not necessary to again serve on him a copy of the venire.— *State v. Washington*, S. C. La , July Term, 1888; 4 South. Rep. 864.

39. CRIMINAL LAW— Nunc Pro Tunc Entry. —— Upon a plea in abatement that the record does not show that an indictment was returned into court, the court may cause the clerk to make the proper entry *nunc pro tunc*, showing the returns of the indictment. — *Waterman v. State*, S. C. Ind., Oct. 10, 1888; 18 N. E. Rep. 63.

40. CRIMINAL LAW—Plea of Guilty—Larceny. ——Circumstances stated under which a defendant having pleaded guilty to a charge of larceny, and was sentenced to ten years' imprisonment, but was permitted upon affidavits to withdraw his plea, and to plead not guilty. — *Myers v. State*, S. C. Ind., Sept. 29, 1888; 18 N. E. Rep. 42.

41. DAMAGES—Obstructing Highway — Profits. —— A was engaged in buying wheat at a warehouse owned by him on defendant's railway, and in shipping it to his mill, and in selling the flour therefrom at that warehouse. Defendant obstructed with its cars for a considerable time the street leading to the warehouse and interrupted A's business: *Held*, that evidence of the diminution of the profits of A's business including the manufacture of flour was too uncertain to form a basis for estimating A's damages.—*Todd v. Minneapolis, etc. R. R.*, S. C. Minn., Sept. 4, 1888; 39 N. W. Rep. 318.

42. DECEIT—Representations—Vendor and Vendee.—— An action for deceit will not lie by the vendee against the vendor on account of representations of the quatity of the ore in a mineral lease sold, where the vendor did not know the representations to be false, but relied in making them on the accuracy of the survey, which proved to be erroneous.— *Chatham, etc. Co. v. Moffatt*, S. J. C. Mass., Oct. 17, 1888; 18 N. E. Rep. 168.

43. DEPOSITIONS—Foreign Witness—Translation—Testimony.——A stenographer announced that he would take down the testimony of a foreign witness as it was interpreted by respondent's Proctor. To this the libelant's Proctor demurred and withdrew; on motion to suppress such deposition the court sustained the motion. — *Enberwey v. La Campagnie, etc.*, U. S. D. C. (N. Y.), June 5, 1888; 35 Fed. Rep. 530.

44. DEPOSITIONS—Type-writer—Waiver. —— The objection that a deposition is taken on a type-writer, instead of being reduced to writing as required by federal law, is waived by the appearance and cross-examination by the adverse party, who is also an attorney of record in the case, without objection to the form of the deposition or the use of the type-writer.— *In re Thomas*, U. S. D. C. (S. Car.), July 13, 1888; 35 Fed. Rep. 822.

45. DIVORCE— Children — Additional Alimony. —— Under Iowa law, there being no change in the circumstances of the parties, a modification of a decree of divorce, relative to alimony and the support of the child, is not authorized.—*White v. White*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 277.

46. DIVORCE—Drunkenness—Evidence.——In a divorce suit plaintiff's testimony that defendant became an habitual drunkard after marriage, is sufficiently corroborated, when the facts in the case, as detailed by other witnesses, show that the drunkenness did not become habitual till after marriage. — *Lewis v. Lewis*, S. C. Iowa, Sept. 8, 1888; 39 N. W. Rep. 271.

47. DIVORCE—Notice—Publication.——A party applying for a divorce cannot give his wife lawful notice of his application by publication, if he is aware of her residence. — *Britton v. Britton*, N. J. Ct. Chan., Sept. 17, 1888; 15 Atl. Rep. 266.

48. DIVORCE—Treatment—Evidence.——The evidence in corroboration of the plaintiff in a divorce suit was not sufficient, under Iowa law. — *Potter v. Potter*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 270.

49. DOWER—Lands in Common.——Under Tennessee law, a widow is entitled to dower in land, of which her husband was one of the tenants in common, but the court may direct its assignment out of other land, taking the value of such land into consideration. — *Clift v. Clift*, S. C. Tenn., Sept. 22, 1888; 9 S. W. Rep. 198.

50. EASEMENT—Light and Air—Injunction.—— A reservation in a deed of a right to build upon the common line between the grantor and grantee, and to open window's for light and air, overlooking the land of the grantee, will be protected by injunction so far as is necessary to secure the enjoyment of the easement reserved. — *Hagerty v. Lee*, N. J. Ct. Chan., Oct. 8, 1888; 15 Atl. Rep. 399.

51. EJECTMENT.——One is liable in an action of ejectment for a projection of his roof over another's land.— *Murphy v. Bolger*, S. C. Vt., Oct. 6, 1888; 15 Atl. Rep. 365.

52. EJECTMENT — Judicial Title — Exception. —— A party in possession of immovable property by an opponent, judicial title cannot force the plaintiff to a trial on an exception that he must first bring a separate and distinct action to annul the judicial proceedings on which he relies for title.— *McCall v. Irion*, S. C. La., July Term, 1888; 4 South. Rep. 859.

53. EJECTMENT— Pleading. —— A complaint in eject-

ment is sufficient which states that plaintiff is seized and possessed of a certain tract or parcel of land, without stating how he became so seized. — *Billings v. Saunderson*, S. C. Mont., Sept. 15, 1888; 19 Pac. Rep. 307.

54. EJECTMENT—Practice — Dismissal. —— An action in ejectment is properly dismissed when the plaintiff therein waives the first trial, and makes no demand for another or second trial, although nearly a year elapsed from the waiver of the first trial until the order of dismissal.—*Kohn v. Barr*, S. C. Kan., Oct. 6, 1888; 18 Pac. Rep. 335.

55. EQUITY—Jurisdiction— Specific Performance.—— Courts of equity in one State having jurisdiction of the persons of the parties may decree specific performance of contracts relating to lands in another State, and may enforce such decree by injunction or attachment or other process affecting the person, but such decree cannot operate upon the title of the lands situated beyond the jurisdiction of the court. —*Lindsley v. O'Reilly*, N. J. Ct. Err. & App., Aug. 9, 1888; 15 Atl. Rep. 379.

56. EQUITY—Pleading—Demurrer— Laches.——When a bill shows upon its face that plaintiff by reason of lapse of time and his own laches is not entitled to relief, the objection may be taken by demurrer. — *Horsford v. Gudger*, U. S. C. C. (N. C.), May Term, 1888; 35 Fed. Rep. 388.

57. EQUITY—Rescission—Purchase by Agent.——A, in consideration of $5,000 by power of attorney, authorized B, as his agent, to sell certain lands at any time within thirty days for not less than $500,000: *Held*, that in a bill to set aside a sale made by B, charging that the purchaser was a minor without property, which was known to B, and that B was interested in the purchase, is good on demurrer. — *Miller v. Louisville & N. R. R.*, S. C. Ala., Dec. Term, 1887; 4 South. Rep. 842.

58. ERROR—Writ of— Compulsory Reference.—— Under Wisconsin law, a writ of error from the supreme court lies in a case in which the court has power to award, and does award, a compulsory reference. — *Buttrick v. Roy*, S. C. Wis., Sept. 18, 1888; 39 N. W. Rep. 345.

59. ESTOPPEL— Representation — Garnishment. —— Where A falsely represents that he is a debtor of B, in order to induce C to garnish him as such debtor, still he is not estopped from denying that he owes B, and at most is only liable to C for his costs incurred in suing and garnishing.—*Henderson v. McMahill*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 276.

60. EVIDENCE—Deceased Persons—Witness. —— Under the statute of Illinois the testimony of a party claiming as his own the property of a deceased person is incompetent, but the heirs or representatives of a deceased person may use such evidence to establish their title. — *Way v. Harriman*, S. C. Ill., Oct. 2, 1888; 18 N. E. Rep. 208.

61. EVIDENCE—Declaration—Res Gestæ. —— Where, in an action for bonds alleged to have been converted by defendant, evidence was given that plaintiff, after a fire at her house, carried a tin box and delivered it to a neighbor for safe-keeping, stating that the box contained her bonds, was held to be admissible as evidence of the fact of such delivery of the tin box, and this, although the defendant was not present.—*Card v. Foot*, S. C. Err. Conn., December Term, 1887; 15 Atl. Rep. 871.

62. EVIDENCE—Parol— Sale. —— In an action on a written contract to sell lumber to plaintiff, defendant may show by parol that his engagement to do so was contingent upon his receiving a satisfactory account of plaintiff's financial condition.—*Reynolds v. Robinson*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 127.

63. EXECUTION—Officer—False Return—Code of Civil Procedure.——Construction of New York code of civil procedure relative to the filing of a transcript of a judgment in a county other than that in which the judgment is rendered; executions founded upon a judgment, the transcript of which has not been so filed, are void, and no action can be maintained against the sheriff for a false return of such execution.—*Dunham v. Reilly*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 89.

64. EXECUTORS — Accounting — Parties. —— Where there has been no accounting between the executor of an estate and the executor of a legatee thereof, and one claiming an interest in the legacy and in the original estate as next of kin and as devisee of the legatee, the amount due such claimant cannot be determined in a suit where he and the executor of the original estate are the only parties.—*Duchesse d' Auxy v. Soulter*, U. S. C. C. (N. Y.), Aug. 7, 1888; 35 Fed. Rep. 809.

65. EXECUTORS—Jurisdiction—Estoppel. —— An executrix, who is also a legatee, who allows a coexecutor to take out letters of administration where there are no assets and to appoint an agent to manage the estate, who acts with such agent and accepts payment of a portion of her legacy, is estopped, so far as her interests are concerned, to assert that such letters and such power of attorney are void.—*Drexel v. Berney*, U. S. C. C. (N. Y.), Aug. 11, 1888; 35 Fed. Rep. 805.

66. EXECUTORS—Bonds—Action—Res Adjudicata.—— Only creditors and distributees can maintain an action against the sureties of a former administrator, or can maintain an action for malfeasance by him, and in such suit the sureties cannot set up as a *res adjudicata* a recovery by the administrator *de bonis non* who sued without plaintiff's consent.—*Beard v. Robb*, U. S. C. C. (Ark.), June 11, 1888; 35 Fed. Rep. 397.

67. EXECUTORS AND ADMINISTRATORS—Conversion of Assets—Laches.——Circumstances stated under which a bill filed by the grandchildren of the testator, charging the deceased executor with conversion of the assets of the estate, could be sustained, although the bill was not filed until five years after the death of the testator and there was no laches on the part of the complainant.—*Culver v. Pierson*, N. J. Ct. Chan., Sept. 14, 1888; 15 Atl. Rep. 269.

68. EXECUTORS AND ADMINISTRATORS—Liability.—— Where an administrator sells the personalty of the estate and takes notes of an insolvent purchaser, with insolvent securities, he is liable for the amount of such notes and the interest thereon.—*Lindley v. State*, S. C. Ind., Sept. 29, 1888; 18 N. E. Rep. 45.

69. EXEMPTION — Declaration before Levy. —— A declaration of exemption as to a debt contracted prior to the constitution of 1868, which describes the land claimed as exempt as the undivided one-fifth of 360 acres and the entire interest in 160 acres, and alleges that the value does not exceed $2,000, is insufficient on its face, under Alabama laws.—*Block v. George*, S. C. Ala., December Term, 1887; 4 South. Rep. 836.

70. FORCIBLE ENTRY AND DETAINER. —— Defendant entered the inclosure containing plaintiff's two salt blocks and removed plaintiff's lock from one block, replacing it with a lock of his own. He then went to the other block for the same purpose, and had there a personal encounter with plaintiff, whom he notified that he took possession of both blocks: *Held*, that the jury were justified in finding a verdict of forcible detainer as to both blocks.—*Pharis v. Gere*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 135.

71. FRAUD—Assignment—Creditor. —— The creditor of an assignor, seeking to set aside as fraudulent a conveyance made by his debtor, may also show that the assignment of his debtor, by which the assignee claims to set aside that conveyance, is also fraudulent and void.—*Loos v. Wilkinson*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 99.

72. FRAUDULENT CONVEYANCE—Evidence—Sufficiency. ——The evidence necessary to overcome the presumption of good faith in favor of a conveyance need not be direct and positive. It is sufficient if the circumstances supply grounds for a legitimate inference. And a voluntary conveyance may be declared fraudulent as to creditors, although there be no actual fraud.—*Heaton v. Shanklin*, S. C. Ind., Oct. 10, 1888; 18 N. E. Rep. 172.

73. FRAUDULENT CONVEYANCES—Husband and Wife—Oral Agreement.——On the trial of the validity as against his creditors of a mortgage given by a husband o his wife to secure a debt due her evidence that he

had orally agreed to pay her ten per cent. interest up to the time the mortgage was given is valid.—*First Nat. Bank v. Fenn*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep 278.

74. GAMING—Public Places—Inn.——Gaming is prohibited, under Alabama law, in a room rented to a party who cooks, eats and sleeps therein, to which the only entrance is through the house where transient guests, as well as regular boarders are entertained, though the house is not licensed, under the law prohibiting gaming in an inn or public place.—*Foster v. State*, S. C. Ala., July 18, 1888; 4 South. Rep. 833.

75. GARNISHMENT — Pledge — Corporation. —— The garnishment of the stock of a corporation cannot affect the rights of a person to whom such stock was pledged prior to the levy of the attachment.—*Morton v. Grafflin*, Md. Ct. App., June 14, 1888; 15 Atl. Rep. 298.

76. GARNISHMENT—Process—Jurisdiction.—— Where the service of trustee process is made by leaving a copy of the writ with the treasurer of a bank which had defendant's bonds in charge, the bonds being payable to bearer, and no service being obtained or notice given to defendant, no jurisdiction was acquired.—*Tweedy v. Bogart*, S. C. Err. Conn., October Term, 1887; 15 Atl. Rep. 374.

77. GUARDIAN AND WARD—Bond—Limitation.——Under Wisconsin law, no action against the sureties on a guardian's bond can be maintained unless brought within four years after the guardian's discharge, which is a part of the contract, and his death operates as his discharge.—*Hudson v. Bishop*, U. S. C. C. (Iowa), Aug. 9, 1888; 35 Fed. Rep. 820.

78. HIGHWAY—Canal—Negligence — Towns. —— The State is liable to a town for damages caused by injury to a highway in consequence of a breach in the Erie canal which was occasioned by the negligence of the State officers.—*Bidelman v. State*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 115.

79. HIGHWAY—Defective Highway—Notice.——Form of notice of injury received from defective highways which is held to state a sufficient cause of action.—*Pendergast v. Town of Clinton*, S. J. C. Mass., Oct. 13, 1888; 18 N. E. Rep. 75.

80. HIGHWAYS—Establishment—Order. —— By error n the order of the county commissioners, the greater part of the county road was described as about ten rods north of the road petitioned for, examined, surveyed, platted, recommended and intended to be laid out by the commissioners: *Held*, that there was no properly established highway upon either route.—*Halverson v. Bell*, S. C. Minn., Sept. 17, 1888; 39 N. W. Rep. 324.

81. HOMESTEAD—Extent—City Limits. —— A homestead, which has never been platted or laid out, subsequently brought within a city's limits, cannot be diminished or reduced in area by the laying out or platting of surrounding lands by other persons.—*Baldwin v. Robinson*, S. C. Minn., Sept. 24, 1888; 39 N. W. Rep. 321.

82. HOMICIDE—Murder—Self-defense — Evidence—Instruction.——Where, in a trial for murder, defendant in his testimony admitted that he had killed his wife, but insisted that he had done so in self-defense, the court properly instructed the jury that they might take into consideration inconsistent statements made by him to the police.—*People v. Reich*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 104.

83. HUSBAND AND WIFE—Fraudulent Intent—Question of Fact. —— Circumstances stated under which the taking of title to property purchased in the name of the wife was held not to be fraudulent in fact. Under the law of Indiana, fraudulent intent is a question of fact, and cannot be presumed.—*Neisler v. Harris*, S. C. Ind., Sept. 29, 1888; 18 N. E. Rep. 39.

84. HUSBAND AND WIFE—Gifts and Conveyances.—— A dation *en paiement* by a husband to his wife, whereby she assumes and agrees to pay debts of the husband to his vendors, is prohibited by law, and does not pass the property.—*Glaze v. Duson*, S. C. La., July Term, 1888; 4 South. Rep. 861.

85. HUSBAND AND WIFE—His Work — Creditors.—— Creditors of a husband are not defrauded if he works gratuitously for his wife or any other person.—*Eilers v. Conradt*, S. C. Minn., Sept. 17, 1888; 39 N. W. Rep. 320.

86. INDIANS—Trading.—— The Klamath reservation for Indians in California is not "Indian country," under the acts of congress prescribing the penalty for unlicensed trading in the "Indian country."—*United States v. Forty-eight Pounds of Tea, etc.*, U. S. D. C. (Cal.), June 7, 1888; 35 Fed. Rep. 408.

87. INDICTMENT—Information—Offense — Informers.—Wherever the punishment prescribed for an offense is confinement in the State prison or penitentiary, the charge is "infamous," and the prosecution must be had by indictment.—*United States v. Johannesen*, U. S. C. C. (Ga.), May 3, 1888; 35 Fed. Rep. 411.

88. INJUNCTION—Private Right—Interest of Party.—— Stockholders of a corporation, having obtained an injunction to restrain collection of taxes on certain property, sought to have parties punished for violating same. It appearing that the property to which the order attached had been sold under a decree of foreclosure since the injunction: *Held*, that a prosecution for contempt could not be maintained.—*Secor v. Singleton*, U. S. C. C. (Mo.), May 24, 1888; 35 Fed. Rep. 376.

89. INJUNCTION—Taxation—Adequate Remedy.——A preliminary injunction restraining a county from selling land for delinquent taxes, granted for alleged fraud and illegality in the assessment, will not be continued on appeal, since, if the plaintiff prevails, a judgment annulling the tax will necessarily destroy the tax-certificates and avoid the sale.—*Scott L. Co. v. Oneida Co.*, S. C. Wis.. Sept. 18, 1888; 39 N. W. Rep. 343.

90. INTOXICATING LIQUORS—Action — Citizen. —— A Methodist clergyman preaching in a town, who expects to remain there only so long as permitted by the church authorities, is authorized as a citizen, under Iowa law, to bring an action to abate the nuisance of selling intoxicating liquors.—*Fuller v. McDonnell*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 277.

91. INTOXICATING LIQUORS—Action—Release.——Under the statute of Massachusetts, giving a right of action against parties who caused the intoxication of a person, the release of one party charged with that offense operates as the release of another person liable for the same result, although their acts producing such result are independent of each other.—*Aldrich v. Punell*, S. J. C. Mass., Oct. 18, 1888; 18 N. E. Rep. 170.

92. INTOXICATING LIQUORS—Constitutional Law.—— An act entitled "an act to interdict the sale of intoxicating and brewed liquors," is not in conflict with that provision of the constitution which prohibits the enactment of statutes having more than a single subject which must be expressed in the title.—*State v. Circuit Court*, N. J. Ct. Eq. and App., Aug. 10, 1888; 15 Atl. Rep. 272.

93. INTOXICATING LIQUORS — Evidence. —— In an action for keeping intoxicating liquors for sale, it is admissible to prove that upon the officers entering the house a person took a bottle apparently containing whisky from a table on which there was a glass and threw it out of the window.—*Commonwealth v. McHugh*, S. J. C. Mass., Oct. 13, 1888; 18 N. E. Rep. 74.

94. INTOXICATING LIQUORS—Former Acquittal.——An acquittal of a charge of selling intoxicating liquors under the statute which fixes a minimum penalty is, under Iowa law, no bar to an indictment charging an offense under the previous law which fixed only one penalty.—*State v. Webber*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 286.

95. INTOXICATING LIQUORS — Injunction — Contempt. ——A proceeding, under Iowa laws, for contempt of an injunction restraining and abating a liquor nuisance, may be brought in the name of the State.—*Fisher v. District Court*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 283.

96. INTOXICATING LIQUORS—Nuisance—Evidence.—— Under Iowa laws, a place where intoxicating liquor has been illegally sold may be abated, when the only

change in the business shown is the discharge of the clerk who was alleged to have made the sales without the owner's knowledge, and the evidence tends to show subsequent sales by the owner.—*Elwood v. Price*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 281.

97. INTOXICATING LIQUORS—Nuisance—Trial.——Instructions in such cases which separately were deficient, were held proper when taken together.—*State v. Price*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 291.

98. INTOXICATING LIQUORS—Time—Instructions.——An instruction that the jury may find the defendant guilty, if he was guilty of the offense at any time within three years, is reversible error, when a part of what the court defines as constituting the offense was made criminal by law within that time.—*State v. Jacobs*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 293.

99. INSURANCE—Life Policy—Beneficiaries—Trust.——Where a party insures his life for the benefit of his children, and for fifteen years pays the premiums and then defaults, then he takes out another policy naming his second wife as the beneficiary but was not examined again, and his age was stated as thirty-nine in 1863: *Held*, that the second policy was a continuation of the first, and the children were entitled to the benefit of it.—*Garner v. Germania, etc. Co.*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 130.

100. INSURANCE—Principal and Agent—Waiver.——A local agent of an insurance company having the usual powers of such agent cannot waive the right of the company to have from the insured a sworn statement of the loss.—*Smith v. Niagara, etc. Co.*, S. C. Vt., Oct. 6, 1888; 15 Atl. Rep. 353.

101. INSURANCE—Suicide—Beneficiary.——Suicide is no defense to an action on a policy issued for the benefit of a third party, when there is no stipulation to that effect in the policy.—*Kerr v. Minnesota M. B. Ass.*, S. C. Minn., Aug. 31, 1888; 39 N. W. Rep. 312.

102. INVENTIONS — Anticipation — Lubricators — Infringement.——The patent on lubricators to John Gates, of September 20, 1870, does not anticipate the improvement on such a device in his patent granted April 29, 1873, and the latter is infringed by the patent to Charles Couse, dated May 19, 1885.—*Seibert, etc. Co. v. Newark, etc. Co.*, U. S. C. C. (N. J.), July 5, 1888; 35 Fed. Rep. 509.

103. INVENTIONS — Fire Extinguishers—Infringement.——Gray's patents Nos. 307,466 and 357,987, for improvements on automatic fire extinguishers, are not infringed by a device having supply and distributing pipes and a valve communicating with the chamber to be protected by a pipe sealed with sensitive solder, which melting releases the air pressure thus releasing a diaphragm and opening the valves.—*Edward Barr Co. v. New York, etc. Co.*, U. S. C. C. (N. Y.), July 18, 1888; 35 Fed. Rep. 513.

104. INVENTIONS—Infringement—Carpet Sweepers.——The handle in Stewart's patent carpet sweeper, No. 186,895, is one of its material elements, and it is not infringed by a carpet sweeper that has no handle.—*Gardner v. Prescott*, U. S. C. C. (Mass.), May 2, 1888; 35 Fed. Rep. 516.

105. INVENTIONS—Infringement—Police Nippers.——Patent No. 152,182 to A. P. Baldwin for "improvement in police nippers," are valid, and are infringed by patent issued to E. D. Bean, May 6, 1884.—*Baldwin v. T. G. Conway Co.*, U. S. C. C. (N. Y.), July 10, 1888; 35 Fed. Rep. 519.

106. INVENTIONS — Infringement — Relief—Destroying Article.——The court will not order the destruction of an infringing article in the absence of *mala fides*.—*American, etc. Co. v. Kitsell*, U. S. C. C. (N. Y.), July 10, 1888; 35 Fed. Rep. 521.

107. INVENTIONS—Infringement—Shoe Stiffeners.——Patent No. 292,514, granted January 29, 1884, to W. J. Simonds, is not infringed by patent No. 350,907, to W. J. Young, both patents being for moulding shoe stiffeners.—*Simonds, etc. Co. v. Young*, U. S. C. C. (Mass.), May 3, 1888; 35 Fed. Rep. 517.

108. INVENTIONS — Infringement — Surrender.—— A party who has surrendered his patent for reissuance as inoperative or invalid, cannot maintain an action upon it while it is in the hands of the commissioner of patents awaiting his decision.—*Burrell v. Hackley*, U. S. C. C. (N. Y.) Aug. 9, 1888; 35 Fed. Rep. 833.

109. INVENTIONS—Novelty—Celluloid Collars and Cuffs.——Letters patent No. 200,939 to A. A. Sanborn and others for making celluloid collars and cuffs are valid, and are infringed by a fabric composed of two layers of muslin with a layer of paper interposed and covered with zylonite made into such articles.—*Celluloid Co. v. Zylonite Co.*, U. S. C. C. (N. Y.), June 26, 1888; 35 Fed. Rep. 417.

110. INVENTIONS — Patentability—Cess-pool.——Claims 1, 4 and 10 of letters patent No. 138,034, to W. C. McCarthy for apparatus for cleaning cess-pools, did not at the date of issuance show any patentable invention.—*McCarthy v. Clark*, U. S. C. C. (Pa.), May 31, 1888; 35 Fed. Rep. 360.

111. INVENTIONS — Patentability—Furnaces.——Letters patent granted to J. H. Helm, February 19, 1878, for improvement in furnaces are valid, and are infringed by the covering of a furnace for heating links, which is provided with a perforated and grooved tile.—*Reiter v. Jones*, U. S. C. C. (Pa.), June 9, 1888; 35 Fed. Rep. 421.

112. INVENTIONS—Patentability—Novelty.——In view of the state of the art for compressing plastic material on a metal core for harness trimmings, Albright's reissue letters patents Nos. 5,155 and 5,156 are void for want of novelty.—*Rubber, etc. Co. v. India Rubber Co.*, U. S. C. C. (N. Y.), May 22, 1888; 35 Fed. Rep. 498.

113. INVENTIONS — Patentability — Plows.—— J. L. Judd's patent on plows, No. 231,810, shows no new invention and no improvement beyond one which a skilled mechanic would readily make.—*Syracuse Chilled Plow Co. v. Robinson*, U. S. C. C. (N. Y.), July 10, 1888; 35 Fed. Rep. 502.

114. INVENTIONS — Rag-engines.——Patent 303,374 to John Hoyt for rag-engines in paper making, is not infringed by patent issued August 10, 1886, to John H. Home, for a machine for the same purposes.—*Hoyt v. Horne*, U. S. C. C. (Mass.), July 25, 1888; 35 Fed. Rep. 830.

115. INVENTIONS — Re issue—Capsules.——The sixth claim of F. A. Hubel's reissued patent No. 10,807, is not broadened from the preceding patent and reissues on which it rests, and the same is not anticipated by the Dick machine of 1865, for moulding capsules.—*Hubel v. Waldie*, U. S. C. C. (N. Y.), June 26, 1888; 35 Fed. Rep. 414.

116. INVENTIONS—Two Years' Prior Use—Ignorance of.——Two years' use of a patented invention prior to the application thereof invalidates the patent, although such prior use was without the applicant's knowledge or consent.—*Campbell v. City of New York*, U. S. C. C. (N. Y.), July 10, 1888; 35 Fed. Rep. 504.

117. INVENTIONS—Want of Novelty—Ice Cream Packing.——I, Allegretti's patent No. 113,239, for packing ice cream by freezing it very hard, is void for want of novelty.—*Hurd v. Snow*, U. S. C. C. (Conn.), June 19, 1888; 35 Fed. Rep. 423.

118. INVENTIONS — Woven-wire Bed Bottoms.—— Patent 241,321 to C. H. Dunks and J. B. Ryan, for swing woven-wire bed bottoms is void.—*Ryan v. Hard*, U. S. C. C. (N. Y.), Aug. 13, 1888; 35 Fed. Rep. 831.

119. JUDGMENT—Husband and Wife—Res Adjudicata—Evidence.——Where a deed was made to a wife and delivered to her husband upon condition that it should not be delivered to her except upon performance of an engagement by the grantor to the husband in which she had no interest, and afterwards in a suit to set aside the deed a judgment against the husband was held to be admissible in evidence, not only against him but against her.—*Ballou v. Ballou*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 118.

120. JUDGMENT—Reopening—Maturing Debt.——Under Kentucky law, a judgment entered in an action on a note may be set aside and a new one entered, which

shall include another note, which was stated in the original petition and became due after the judgment was entered, amended pleadings having been filed alleging that such note had matured. — *Carr v. Watkins*, Ky. Ct. App., Sept. 13, 1888; 9 S. W. Rep. 218.

121. JUDGMENT—Res Adjudicata. —— Where on foreclosure of a mortgage given by a husband to his wife, his creditors file a crosss-bill, alleging the mortgage to be fraudulent as to them, and on trial the court strikes out all evidence of fraud as not being properly raised on the pleadings and decrees for the wife, such creditors cannot sue her to annul the mortgage and to hold her as trustee for the creditors for the proceeds of the mortgaged property. — *Farwell v. Brown*, U. S. C. C. Ind., July 21, 1888; 35 Fed. Rep. 811.

122. JUDGMENT—Res Adjudicata— Admiralty.——The insurers of a cargo of grain having paid the loss and become subrogated to the rights of the insured, and having obtained a decree *in rem* against the boat for the amount of the loss, such decree is conclusive of a libel *in personam* to charge the owners of the boat with liability as common carriers. — *Providence W. Ins. Co. v. Morse*, U. S. D. C. (N. Y.), June 27, 1888; 35 Fed, Rep. 863.

123. JUDGMENT—Vacating—Mistake— Uncertainty.—— Where an appellant asked to have a judgment vacated on the ground that it was rendered against her through mistake in advertance or excusable negligence: *Held*, that she was not entitled to the relief asked for because the grounds relied upon were too general, vague and uncertain.—*Hall v. Durham*, S. C. Ind., Oct. 12, 1888; 18 N. E. Rep. 181.

124. JURISDICTION—Patents—Contract.—— The jurisdiction of the federal courts does not extend to controversies arising out of contracts concerning patents where the parties are both citizens of the same State.—*Williams v. Star Sand Co.*, U. S. C. C. (Pa.), May 31, 1888; 35 Fed. Rep. 369.

125. LANDLORD AND TENANT — Re-entry — Code Civil Procedure. —— Circumstances stated under which a landlord was entitled to *re-entry* on land for the payment of rent, under Code Civil Procedure N. Y. §§ 1504, 1505, 1507, 1516. Proceedings to be taken where the title is held in severalty and not by entirety. — *Church v. Seeley*, N. Y. Ct. App., Oct. 2, 1888; 18 E. Rep. 117.

126. LICENSE— Aqueduct — Parol — Estoppel. —— A license to take the water of a spring through an aqueduct although given by parol is irrevocable during the existence of the aqueduct, and a court of equity will, upon the ground of equitable estoppel, protect by injunction the right of the licensee.—*Clark v. Glidden*, S. C. Vt., Oct. 2, 1888; 15 Atl. Rep. 358.

127. LIMITATIONS—Coverture — Suit. —— Under Kentucky law, the limitation as to the time when a married woman can sue to recover real property, begins to run from the time of the judgment of a court of equity allowing her to sue, and not from the time she is abandoned by her husband.— *McDanell v. Landram*, Ky. Ct. App., Sept. 15, 1888; 9 S. W. Rep. 223.

128. MARITIME LIENS — State Laws — Validity — Home Port.—— The laws of the State of Missouri providing for liens for wages and supplies, etc., are valid as creating a lien at the home port, and are enforceable in admiralty against the vessel.— *Baschert v. The Wyoming*, U. S. D, C. (Mo.), June 16, 1888; 35 Fed. Rep. 548.

129. MARITIME LIEN—Supplies— Coal Contract. ——B furnished coal to a steamship on the credit of the vessel, taking the master's draft on the owners therefor: *Held*, that B had a maritime lien on the steamship for such supply and might surrender the draft and enforce his lien. — *Braga v. The Solis*, U. S. C. C. (N. Y.), June 28, 1888; 35 Fed. Rep. 545.

130. MECHANIC'S LIEN — Notice — Statute. —— Under the statute of Connecticut, a material man is not entitled to a lien although he files his claim within the prescribed period, unless he has given the owner notice in accordance with the terms of the statute. — *Hill v. Matthewson*, S. C. E. Conn., March Term, 1888; 15 Atl. Rep. 368.

131. MECHANIC'S LIEN — Public School-house. —— A public school-house is not subject to a mechanic's lien under chapter 170, Gen. Laws, 1887.— *Jordan v. Board of Education*, S. C. Minn., Oct. 16, 1888; 39 N. W. Rep. 801.

132. MECHANIC'S LIEN—Statute— Notice.——Material men who notify the wife of the owner of the property that they are furnishing material to the contractor but do not notify the owner himself, are not entitled to a lien.— *Schafer v. Archbold*, S. C. Ind., Oct. 9, 1888; 18 N. E. Rep. 56.

133. MORTGAGE—Equity of Redemption.——After the relation of mortgagor and mortgagee is once established, any arrangement by which the mortgagee acquires the equity of redemption without a foreclosure is regarded with jealousy and carefully scrutinized by the courts.—*Marshall v. Thompson*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 809.

134. MORTGAGE—Foreclosure—Parties.—— Upon the death of the trustee of a mortgage the trust devolves upon his personal representatives, and they, and not his heirs, should be made parties to a proceeding to foreclose a junior mortgage. — *Lambertville, etc. Co. v. McCready, etc. Co.*, N. J. Ct. Chan., Oct. 8, 1888; 15 Atl. Rep. 388.

135. MORTGAGE—Foreclosure—Sale—Resale. —— Circumstances stated under which land sold under foreclosure of a mortgage was ordered to be resold upon evidence tending to show that it had not brought its value at the first sale.—*Miller v. Kendrick*, N. J. Ct. Chan., Sept. 12, 1888; 15 Atl. Rep. 259.

136. MORTGAGE—Insolvency—Bill of Sale.——A bill of sale, delivered by the purchaser to the person who loaned him the money as a mortgage, is not a mortgage, nor does it validate a subsequent mortgage, made in controvention of the statute which forbids mortgages made by an insolvent person within six months prior to his insolvency.— *Copelend v. Barnes*, S. J. C. Mass., Oct. 5, 1888; 18 N. E. Rep. 65.

137. MUNICIPAL CORPORATION — Contributory Negligence — Instruction. —— In an action for injuries received from a defective highway, the instruction of the court which left to the jury the whole question of contributory negligence on the part of the plaintiff is correct.—*Parker v. City of Springfield*, S. J. C. Mass., Oct. 9, 1888; 18 N. E. Rep. 70.

138. MUNICIPAL CORPORATION—Ordinance.—— Under the law of Indiana no municipal corporation can by ordinance provide for the punishment of any act which is made an offense by the general law of the State; hence, the arrest by a policeman for an offense against the board of police commissioners under an ordinance of the city is wrongful.— *City of Indianapolis v. Huegle*, S. C. Ind., Oct. 10, 1888; 18 N. E. Rep. 172.

139. MUNICIPAL CORPORATIONS — Street Railways — Licenses. —— A municipal corporation can increase within reasonable limits a license fee originally imposed on the granting of the franchise for a street railway, though such franchise was granted before the repeal of Laws Wis. 1860, ch. 313 § 3. — *State v. Hilbert*, S. C. Wis., Sept. 18, 1888; 39 N. W. Rep. 326.

140. NEGLIGENCE—Contributory Negligence—Question for the Jury. —— It is not negligence as a matter of law to permit a child of four years of age to play on a sidewalk with another six years old. If the child is fatally injured the question of negligence of the parent is one for the jury. — *Birkett v. Knickerbrocker, etc. Co.*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 108.

141. NEGLIGENCE—Mail Carriers — Carriers. —— It is actionable negligence on the part of companies having a contract to carry stamped letters to fail to provide a safe passage to and from its mail trains.—*Hale v. Grand, etc. Co.*, S. C. Vt., Sept. 24, 1888; 15 Atl. Rep. 300.

142. NEGOTIABLE INSTRUMENT— Indorsement.——Indorsement of a note by a third person before delivery to the payee, though *prima facie* evidence of a guaranty, may be shown to have been made with intent to assume the liability merely of an indorser. — *De Witt, etc. Co. v. Nixon*, S. C. Ill., Sept. 27, 1888; 18 N. E. Rep. 203.

143. NUISANCE—Sewerage — Riparian Rights— Municipal Corporation. —— One who has collected in the vicinity of a city the waters of a stream which flowed through the city and formed a basin for the use of such water for domestic purposes, may maintain an action against the city for polluting the stream by sewerage and otherwise, and obtain an injunction to supress such nuisance. — *Chapman v. City of Rochester*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 88.

144. OFFICER—Disqualification — Interest — Drainage. —— An officer is disqualified to act officially if he is interested in the subject, or is related within the sixth degree to persons who are so interested. A surveyor so interested cannot legally lay off a public ditch affecting his own property and that of his father. — *Markley v. Rudy*, S. C. Ind., Sept. 28, 1888; 18 N. E. Rep. 50.

145. PARTITION—Payment of Debts. —— A decree of partition of lands of a deceased testator will not be set aside on appeal, because it was made within the time allowed for settling estates and the land might be required to pay debts, when the petition alleged that the personal property would cover the debts, which was denied by the answer, but no proof was offered on the subject. — *Snyder v. Snyder*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 297.

146. PLEADING—Abatement— Removal of Causes.—— A plea in abatement to a petition to remove a cause from a State to a federal court will not be tested by technical rules. It is sufficient if it sets out fairly and with sufficient certainty matters which, if true, negatives the jurisdiction of the federal court. — *Johnson v. Accident Ins. Co.*, U. S. C. C. (Mich.), June 19, 1888; 35 Fed. Rep. 37.

147. PLEADINGS — Counterclaim — Damages. —— A agreed to furnish B with papers partly printed, which should not contain more than three columns of advertisements. The papers contained more advertisements. A sued B, who published a newspaper, under the contract: *Held*, that B could recoup for the diminished value of the papers, and in the absence of such proof he could recoup nothing. — *Battzell v. Moritz*, S. C. Ala., July 18, 1888; 4 South. Rep. 835.

147. PLEADING—Indemnity—Loss.——A petition by A against B on a contract by B to save A harmless from certain debts, is insufficient when it fails to allege that B has failed to save A harmless against any particular debt.—*Wassenick v. Ireland*, S. C. Tex., June 11, 1888; 9 S. W. Rep. 203.

149. PLEDGE—Sale—Mistake — Damages. —— Where the pledgee of stock by an honest mistake sold the stock before the debt which it secured was due, the the measure of damages which the pledgor can recover is the difference between the debt and the amount for which he could have purchased the same amount of the same stock.—*Wright v. Bank of The Metropolis*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 79.

150. POST-OFFICE — Mails — Use of to Defraud. —— Forming a plan to defraud, by ordering goods by mail, with the intention of not paying for them, under the false pretense that the persons mailing the orders are merchants, is indictable under the acts of Congress. — *United States v. Watson*, U. S. D. C. (N. C.), April 27, 1888; 35 Fed. Rep. 358.

151. PRACTICE—New Trial — Discretion. —— Plaintiff introduced three real estate dealers, who were acquainted with his land, each of whom valued his property condemned for public use at $7,000 and upwards. Defendant introduced five witnesses, who were not experts and were not shown to have any special knowledge of its value, who fixed its value from $3,200 to $4,000. The jury assessed the value at $4,000: *Held*, that it was not an abuse of discretion to grant the plaintiff a new trial.—*Allen v. City of Milwaukee*, S. C. Wis., Sept. 18, 1888; 39 N. W. Rep. 347.

152. PRINCIPAL AND AGENT—Apparent Authority.—— A on two occasions indorsed the drafts of B's traveling salesman on B, which drafts were paid. A indorsed a third draft, which the salesman said was, as were the others, for his expenses. A was not aware that the salesman had been discharged: *Held*, that A, having been compelled to pay the draft, could not recover from B.—*Groneweg v. Kusworm*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 288.

153. PRINCIPAL AND AGENT— Contract—Sale.——Where one having charge of water-works buys a pump from a dealer without saying for whom he is buying, the water company whom he represents is liable for the price.—*Goss v. Helbing*, S. C. Cal., Oct. 5, 1888; 19 Pac. Rep. 277.

154. PRINCIPAL AND SURETY — Contribution Among Sureties.——In a suit on an official bond a compromise judgment was rendered, by which it was stipulated that some of the sureties should be discharged from liability thereon upon paying part thereof, but that the principal and another surety, who was not a party to the proceeding, should be excluded from the benefit of the compromise. Such sum was paid, and subsequently for a consideration the principal was discharged from liability on the judgment, and the order therefor expressly reserved the rights of the sureties, who paid, against their co-surety: *Held*, that this co-surety was not liable to contribute to the sureties who paid. — *Hamilton v. Glasscock*, S. C. Tex., June 19, 1888; 9 S. W. Rep. 207.

155. PRINCIPAL AND SURETY — Discharge of Surety — Removal of Note. —— The sureties on a note who are not discharged, because the creditor twice accepted in renewal from the principal notes with forged names of other sureties thereon, and surrendered the original note in ignorance of the forgery, no bad faith or negligence on the part of the creditor being shown. — *First N. Bank v. Buchanan*, S. C. Tenn., Sept. 26, 1888; 9 S. W. Rep. 202.

156. RAILROAD COMPANIES—Breach — Damages. —— Where two railroad companies whose tracks cross each other agree upon a code of signals, the company breaking that contract is liable in damages for such breach to the other company. — *New York, etc. Co. v. Grand Rapids, etc. Co.*, S. C. Ind., Oct. 12, 1888; 18 N. E. Rep. 182.

157. RAILROAD COMPANY—Railroad Crossing—Eminent Domain—Procedure.——A railroad company wishing to prevent another railroad company from crossing its track must resort to the statute prescribing the procedure to be taken in such cases, to wit, § 28 ch. 140, which authorizes one railroad to cross the track of another.—*In re New York, etc. Co.*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 120.

158. RELIGIOUS SOCIETIES — Incorporation —Statutes. ——The Wisconsin acts of 1847 and 1849 relative to religious societies were so different that an organization of the same society under both acts could not exist at the same time, and the organization under the latter act was a surrender of the charter under the former, which was accepted by the State by the enactment of the latter act. — *Evenson v. Ellingson*, S. C. Wis., Sept. 18, 1888; 39 N. W. Rep. 330.

159. REMOVAL OF CAUSES— Action—Residence—Motion to Removal. —— In a case removed from the State to the federal court, a motion to remand the same for the reason that it appears that the defendant is not a resident of the district, will be overruled when the record shows a plea by defendant to the merits.— *Cooley v. McArthur*, U. S. C. C. (Mich.), July 2, 1888; 35 Fed. Rep. 372.

160. SALVAGE—Compensation—Wreckers. —— Where a vessel was sunk and the cargo retrieved at great labor and expense by licensed wreckers: *Held*, that they were entitled to twenty-five per cent. on all cotton saved dry, and thirty-three and one-third per cent. on all saved partly wet, and fifty per cent. on all saved from more than six feet of water. — *Baker v. Cargo, etc.*, U. S. D. C. (Fla.), May 3, 1887; 35 Fed. Rep. 537.

161. SEAMEN—Disabled— Abandonment — British Vessel. —— Under the British merchants shipping act, a vessel has no right to abandon a disabled seaman without payment of his wages up to the time of his being put ashore, together with provisions for his return

home.—*Harvey v. Smith*, U. S. D. C. (N. Y.), May 28, 1888; 35 Fed. Rep. 367.

162. SHIPPING — Bill of Lading — Frost Damage. —— Fruit having become frozen before delivery from the vessel carrying the same, without fault on the carrier's part, it was held to come within the exception of the bill of lading, concerning injuries by the act of God, and relieved the carrier from liability therefor.— *The Alesia*, U. S. D. C. (N. Y.), June 5, 1888; 35 Fed. Rep. 531.

163. SHIPPING—Damages — Negligence. ——A vessel provided a rope for hoisting cargo; the libelant a stevedore, changed it for another of his own selection; in working, the latter parted and threw the libelant into the hold: *Held*, that he could not charge the ship for such injury. — *Wilsen v. The Leocadia*, U. S. D. C. (N. Y.), June 8, 1888; 35 Fed. Rep. 534.

164. SHIPPING — General Average — Stranded Vessel. —— When a stranded vessel cannot be got off without great expense and delay, and the master unloads the cargo with the intention of forwarding it by another vessel, and he so forwards it at small cost, only the expense of unloading is a general average charge, not the subsequent expenditure in floating the vessel; the cost of the subsequent transportation is particular average against the cargo alone, and the ship is entitled to her whole freight. — *The L'Amerique*, U. S. D. C. (N. Y.), July 10, 1888; 35 Fed. Rep. 835.

165. SHIPPING—Non-liability— Tort — Guano.—— The captain of a schooner got a cargo of guano, and delivered it to the consignees under a charter party. It subsequently appeared that the taking of the guano was fraudulent, but the captain knew nothing of any irregularity: *Held*, that the schooner was not liable. — *Murguiondo v. The B. F. Hart*, U. S. D. C. (Md.), July 3, 1888; 35 Fed. Rep. 535.

166. STATUTE — Construction — Appropriations. —— Construction of Indiana statutes appropriating $2,000 for the construction of a monument to soldiers and sailors, and providing for the compensation of the commissioners. —*Campbell v. Commrs. etc. Co.*, S. C. Ind., Oct. 10, 1888; 18 N. E. Rep. 33.

167. STATUTES—Penalty — Weights. —— Though the statute provides a penalty for selling goods by unproved scales and measures, still the contract is void. —*Bisbee v. McAllen*, S. C. Minn., Aug. 28, 1888; 39 N. W. Rep. 299.

168. SPECIFIC PERFORMANCE — Compensation. —— Circumstances stated under which the party was held to be entitled to specific performance of a contract by the conveyance of the land, and the other contracting party to compensate for the improvements that he had made, so far as they resulted in the permanant benefit of the land. — *Leeds v. Penrose*, N. J. Ct. Chan., Sept. 12, 1888; 15 Atl. Rep. 261.

169. SPECIFIC PERFORMANCE — Diligence. —— A for more than a year neglected to consummate his contract for the purchase of real estate, twice during that time refused to do so, objecting that the title was bad, which is admitted to have been an unsubstantial objection: *Held*, that specific performance must be denied.—*Simpson v. Atkinson*, S. C. Minn., Sept. 17, 1888; 39 N. W. Rep. 323.

170. SPECIFIC PERFORMANCE — Option.—— A written agreement by which A and B agreed to relieve C and D from furnishing sureties on notes given for land sold at public sale under a decree, in return for which C and D agreed that A and B might, at their option, buy the land from them at a specified rate within a specified time, is an offer to sell, supported by a consideration.—*Bradford v. Foster*, S. C. Tenn., Sept. 18, 1888; 9 S. W. Rep. 195.

171. SPECIFIC PERFORMANCE — Premature.——A bill for the specific performance of a contract to lease a building when completed, cannot be maintained while the building is still in course of construction.—*Friedman v. McAdory*, S. C. Ala., July 18, 1888; 4 South. Rep. 835.

172. SUNDAY — Contract—Sale.——A sale of a horse made on Sunday is illegal, although the price is paid on Monday and the purchaser cannot maintain an action for false representation.—*Grant v. McGrath*, S. C. Err. Conn., May Term, 1888; 15 Atl. Rep. 370.

173. SURFACE WATER—Drainage—Easement.——Circumstances stated under which it was held that two adjacent proprietors of land having mutually for many many years each drained his land by throwing the water on the land of the other: *Held*, that an agreement to that effect by mutual consent was proved.—*Davison v. Hutchinson*, N. J. Ct. Chan., Sept. 17, 1888; 15 Atl. Rep. 257.

174. TAXATION —Assessments — Filing Lists.——The Kentucky law, about furnishing the clerk with a written description of land by a non-resident owner for the use of the assessor, is sufficiently complied with if the owner in person and within the proper time lists the land with the assessor.—*Com. v. Ellis*, Ky. Ct. App., Sept. 13, 1888; 9 S. W. Rep. 221.

175. TAXATION — Assessment — Statute — Banks and Banking.——Construction of New York statutes relative to the taxation of property of banks, its assessments for a taxation and the increase or reduction of such valuation.—*Apgar v. Hayward*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 85.

176. TAXATION—Corporation—Receiver. —— When a railroad is in the hands of a receiver, the assets in his hands may be resorted to for the taxes due upon the franchise of such railroad company, under the New York corporation act.—*Central, etc. Co. v. New York, etc. Co.*, Oct. 2, 1888; 18 N. E. Rep. 92.

177. TAXATION— Corporation — Reorganization. —— Where a corporation has been dissolved by foreclosure and sale of its assets and franchises and the purchasers form another corporation to operate under the same franchises, such coporation is liable to the tax imposed by the laws of New York on corporations, to wit. one-eighth of one per cent. on the capital stock of the corporation.— *People v. Cook*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 113.

178. TAXATION— Exemption — Bank-charter. —— A provision in a bank's charter, declaring that the payment of a sum not exceeding 50 cents on each $100 of its capital stock shall be in full of all tax or bonus, exempts said bank from the payment of county and city taxes. — *Franklin County v. Deposit Bank*, Ky. Ct. App., June 5, 1888; 9 S. W. Rep. 212.

179. TAXATION—Exemption — Religious Societies.—— The property of religious and charitable societies, used for the purposes of those societies, is exempt taxation, but the parsonage occupied by the pastor rent free is not so exempt. — *Third Congregational Soc. v. City of Springfield*, S. J. C. Mass., Oct. 9, 1888; 18 N. E. Rep. 68.

180. TAXATION—National Banks.—— National banks, located in the State of Kentucky, stand, in reference to taxation, upon precisely the same footing with State banks. — *City N. Bank v. City of Paducah*, Ky. Ct. App., June 9, 1888; 9 S. W. Rep. 218.

181. TAXATION—Tax-titles—Limitations.—— Interpreting the Iowa law of taxation and limitation of actions on tax-title.—*Griffin v. Turner*, S. C. Iowa, Sept. 10, 1888; 39 N. W. Rep. 294.

182. TELEGRAPH COMPANY— Agent — Fraud. —— The local agent of a telegraph company sent a forged dispatch to a merchant to send money to his correspondent to use in buying grain. The money was forwarded by express, and was converted to his own use by the agent, who was also the local agent of the express company: *Held*, that the telegraph company was liable, though an action might also have been maintained against the express company.— *McCord v. Western U. T. Co.*, S. C. Minn., Sept. 4, 1888; 39 N. W. Rep. 315.

183. TELEGRAPH COMPANY — Cipher Dispatch — Damages.——When a telegraph company negligently fails to send a message containing an acceptance of an offer to purchase cotton, whereby the bargain is lost, it is liable to the sender, in addition to the money paid for its transmission, for damages caused by such loss, although the message was in cipher and its contents

not communicated to the company. — *Western U. T. Co. v. Way*, S. C. Ala., Dec. Term, 1887; 4 South. Rep. 844.

184. TOWAGE—Negligence of Tug — Care. —— When from surrounding circumstances and influences a great degree of care is requisite to prevent accident to a vessel being towed by a tug, the managers of, and such tug will be liable for not exercising the same, for any damages resulting from such want of care. — *The Isaac H. Tillyer v. The T. J. Schuyler*, U. S. D. C. (Pa.), June 22, 1888; 35 Fed. Rep. 551.

185. TOWAGE— Standing Tow — Known Obstructions. —— On evidence showing that the rock upon which libelant's boat struck when in tow of a tug boat was an obstruction well known to navigators, the tug was held liable for such stranding. — *Hooper v. The Mary N. Hogan*, U. S. C. C. (N. Y.), June 30, 1888; 35 Fed. Rep. 554.

186. TOWNS—Officers—Elections.—— Where the statute requires that a township officer be elected at a regular meeting held on a particular day, the election may occur at a later date, to which the meeting has adjourned.—*Carter v. McFarland*, S. C. Iowa, Sept. 8, 1888; 39 N. W. Rep. 268.

187. TRADE-MARK—Injunction— Laches. ——One who in good faith uses a label in ignorance of the fact that said label is another's trade-mark, will be restrained its further use, and if the owner of the label negligently fails to take steps to protect his rights he is not entitled to an account.—*Low v. Fels*, U. S. C. C. (Pa.), April 20, 1888; 35 Fed. Rep. 361.

188. TRADE-MARKS—Protection of — Acid Phosphates. —— The name "acid phosphate" is not a meaningless and arbitrary one but is descriptive, and, standing by itself, cannot be appropriated as a trade-mark. — *Rumford Chemical Works v. Muth*, U. S. C. C. (Md.), July 9, 1888; 35 Fed. Rep. 524.

189. TRUSTS — Mining Claims — Adverse Claims. —— Where by an agreement between the owners of a mining claim one of them relocates it in his own name, he holds as trustee for himself and the others, even though he has applied for a patent and obtained a certificate of payment in his own name, and the others have filed no adverse claim.—*Hunt v. Patchin*, U. S. C. C. (Nev.), June 8, 1888; 35 Fed. Rep. 816.

190. VAGRANCY—Indictment—Pleading.——An indictment which charges that defendant was at W an idle person, etc., from January 1 to June 1, is sufficient to charge the offense of vagrancy. — *Commonwealth v. Lord*, S. J. C. Mass., Oct. 13, 1888; 18 N. E. Rep. 67.

191. WHARVES—Franchise—Letters Patent. —— Construction of letters patent issued by the State of New York granting a franchise for the construction of certain wharves and docks. — *Harper v. Williams*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 77.

192. WILL—Attestation — Execution. —— Where the attestation clause of a will was in the usual form, and the witnesses stated that although they had no distinct recollection of the circumstances they believed that the statements in that clause were correct and the will itself was in the handwriting of the testator: *Held*, that the proof of the execution was sufficient. — *In re Hunt*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 106.

193. WILL—Construction — Condition. —— Where a testator gave to his granddaughter the residue of his estate, with a limitation over in case of her death without issue: *Held*, that under the terms of the will construed altogether the devise became absolute upon the birth of issue.—*Chaplin v. Doty*, S. C. Vt., Oct. 3, 1888; 15 Atl. Rep. 362.

194. WILL—Contest—Cost—Securities.——Where, after a will has been probated, a person presents a later will for probate and proposes to contest the first will, he is bound and must give security for the cost of such contest.—*Burns v. Travis*, S. C. Ind., Oct. 9, 1888; 18 N. E. Rep. 45.

195. WILL—Lost Instrument — Revocation. —— Circumstances stated under which it was held that the evidence tending to show that a will was destroyed by parties interested in its destruction was insufficient to establish that fact, the presumption being from all the circumstances of the case that the testator has revoked and destroyed it.—*Collyer v. Collyer*, N. Y. Ct. App., Oct. 2, 1888; 18 N. E. Rep. 110.

196. WILL—Non-resident — Probate — Evidence. —— Under the laws of New Jersey a transcript of a will, executed in another State and duly proved therein, is competent as evidence of the fact of the execution and probate of the will, but not of its effect and operation in regard to the transfer of lands in New Jersey, if the mode of probate in the State of the domicil differs from that prescribed by the law of New Jersey.— *Nelson v. Potter*, S. C. J., June Term, 1888; 15 Atl. Rep. 375.

197. WILL—Testamentary Capacity — Presumption — Burden of Proof. —— Sanity is presumed by the law; the burden of proof of showing a want of testamentary capacity is upon the party alleging that fact. The burden may however be shifted by showing antecedent insanity of the testator, in which case those offering the will must prove that it was executed during a lucid interval.—*Elkinton v. Brick*, N. J. Perro. Ct., Sept. 24, 1888; 15 Atl. Rep. 391.

198. WITNESS — Transaction with Deceased. —— An executor sued to restrain B from trespassing on land of the estate: *Held*, that under Iowa law A and his wife could not testify as to matters tending to show a conveyance to him by the deceased of the land and his payment therefor, though the executor testified to searching among the papers of the deceased for a conveyance. — *Cochran v. Breckenridge*, S. C. Iowa, Sept. 8, 1888; 39 N. W. Rep. 274.

199. WITNESS—Transactions with Deceased.——In an action by A against the executors of an attorney for failure to pay over to him money collected for him by the attorney, the debtor is competent to prove his payment to the attorney, under Tennessee law. — *McBrien v. Martin*, S. C. Tenn., Sept. 18, 1888; 9 S. W. Rep. 201.

200. WRITS— Service — Attending Trial. —— A non-resident party to an action here is privileged from liability to suits commenced by summons while necessarily and in good faith attending the trial thereof, or an examination therein before a referee or master in chancery. — *First N. Bank v. Ames*, S. C. Minn., Aug. 31 1888; 39 N. W. Rep. 368.

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The second volume of the American State Reports which now lies before us follows fast upon the first which was issued in August last. Such examination as we have been able to give to the work has satisfied us that it is in all respects a worthy successor of its predecessor, and the new series is likely to prove an improvement even upon the American Decisions and the American Reports, if that is possible. The cases are well selected and the annotations are of themselves worth the price of the volume. The enterprising publishers and the learned and veteran editors deserve the thanks of the profession.